



1 COURT REPORTER:

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## INDEX

**OPENING STATEMENTS:**

By Mr. Banes	6
By Mr. Schexnayder	13

**EDWARD J. TWEED**

Direct by Mr. Banes	16
Cross by Mr. Schexnayder	131
ReDirect by Mr. Banes	189
ReCross by Mr. Schexnayder	205

**STEPHEN J. ROPOLLO**

Direct by Mr. Banes	208
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## 1 P R O C E E D I N G S

2 THE LAW CLERK: All rise.

3 THE COURT: Good morning. Thank you. Please  
4 have a seat.08:59:22 5 Cause Number 4-15-CV-2428, Matthew Walker, et  
6 al, vs. E & L Transfer, et al.7 Counsel, please announce your appearances  
8 for the record.9 MR. BANES: Bryant Banes for E & L Transfer and  
08:59:36 10 Mr. Tweed. Your Honor, with me at counsel table is  
11 Mr. Tweed.12 MR. SCHEXNAYDER: Your Honor, Martin  
13 Schexnayder and Farnaz Pishgahzadeh are counsel for Fisher  
14 & Phillips; and I have Mr. Roppolo, Steve Roppolo, here as  
08:59:49 15 the representative of Fisher & Phillips.16 THE COURT: Very well. The case was originally  
17 styled as I called it, Walker vs. E & L Transfer.18 Effectively now the case is E & L  
19 Transfer, et al vs. Fisher & Phillips. So going forward,  
09:00:08 20 that will be the style that I will be using for the case.21 Counsel, by way of any preliminary matters  
22 before we start, anything you need to bring to my  
23 attention?24 MR. BANES: Your Honor, we have the exhibits  
09:00:22 25 there right next to you, and there are some for the -- for

1 the witness up there right next to the -- I assume the  
2 witness is going to go here.

3 THE COURT: Very well.

4 MR. SCHEXNAYDER: And, Your Honor --

09:00:56

5 THE COURT: And I -- oh, and I have your  
6 exhibit list that I took out of binder one, which I assume  
7 is your full exhibit list. And anything else, Counsel?

09:01:11

8 MR. BANES: There is also -- in the pretrial  
9 order, Your Honor, there is this exhibit list that uses the  
10 form so we can show that it is marked and admitted and  
11 things of that nature. So I'm not sure which one you want  
12 to use.

13 THE COURT: Ms. Edwards, could you print that  
14 one out for me, the one that he's referring to?

09:01:24

15 Anything else, Counsel?

16 MR. BANES: No, Your Honor.

17 THE COURT: Okay. Counsel, any preliminary  
18 matters?

09:01:31

19 MR. SCHEXNAYDER: Your Honor, our exhibits are  
20 right here. This is your copy. Same thing; it's in one  
21 binder, with the exhibit list in the front.

22 MR. BANES: Ma'am, for easy reference, it's  
23 document 157-1 and starts at page 2.

24 THE COURT: Very well. Anything else, Counsel?

09:01:58

25 MR. BANES: No.

1 THE COURT: All right. Counsel, your opening  
2 statement.

3 MR. BANES: All righty, Your Honor. Your  
4 Honor, would you like us to go to the dais or stay here?

09:02:05 5 THE COURT: Whatever you like.

6 MR. BANES: May it please the Court, Your  
7 Honor. Your Honor, this case -- Your Honor is already  
8 familiar with the facts in this case to a large degree and  
9 ruled on a motion for summary judgment. So you will hear  
09:02:43 10 much the same testimony today as that you -- that has  
11 already been before you.

12 The only things I want to emphasize as we  
13 go through this are that when a lawyer -- or when a  
14 client -- there are a few professions that are out there  
09:03:00 15 when a -- that when someone approaches or encounters those  
16 professions, they're at their most vulnerable. There is  
17 police. There is -- there is -- there are doctors,  
18 priests, and then ultimately there are lawyers.

19 When a client goes to a lawyer and seeks  
09:03:20 20 their advice, it is important for the lawyer to understand  
21 that the client is vulnerable and needs to understand  
22 exactly what is going on, needs to understand all the  
23 implications. And our ethical rules require us to ensure  
24 that the client is fully informed, that all the limitations  
09:03:41 25 of that attorney are known to the client and that all the

1 different permutations and abilities that the lawyer has to  
2 exercise in the client's behalf are known.

3                   There are actually specific rules that  
4 apply in this instance. What we have in Exhibit 16 is the  
09:03:59 5 conflict waiver. Fisher & Phillips will rely heavily on  
6 that document throughout this hearing to say that Mr. Tweed  
7 knew and understood what he was getting into and waived,  
8 you know, the -- any conflict that exists.

9                   The Court has already found an issue of  
09:04:18 10 disputed fact on that point, and we will prove today that  
11 it -- that he did not understand, that he did not -- that  
12 not everything was fully disclosed to him and, consistent  
13 with Rule 10 -- 1.06, that a settlement or a resolution of  
14 claims between clients was made without full explanation as  
09:04:42 15 required by that rule.

16                   Exhibit 40 in the record has many of the  
17 ethical rules we will talk about, but when we're looking at  
18 them, what is full disclosure and informed consent? What  
19 is it?

09:05:02 20                   The rule says -- and I am looking at the  
21 notes to Rule 1.06 -- that when a disinterested lawyer  
22 would conclude that the client should not agree to the  
23 representation under the circumstances, the lawyer involved  
24 should not ask for such agreement or provide representation  
09:05:18 25 on the basis of the client's consent. When more than one

09:05:35

1 client is involved, the question of conflict must be  
2 resolved as to each client. Moreover, there may be  
3 circumstances where it is impossible to make the full  
4 disclosure necessary to obtain informed consent. For  
5 example, when a lawyer represents different clients in  
6 related matters and one of the clients refuses to consent  
7 to the disclosure necessary to permit the other client to  
8 make the -- an informed decision, the lawyer cannot  
9 properly ask the latter to consent.

09:05:52

10 As we're going through the documents here,  
11 sir -- or Your Honor, you will see that Fisher & Phillips  
12 started representing Ms. Radel and Veritas against  
13 Mr. Tweed's interests from the moment this lawsuit was  
14 filed.

09:06:09

15 Historically they had all been --  
16 Ms. Radel and Fisher & Phillips had been representing  
17 Mr. Tweed, E & L, Veritas, and Ms. Radel in various  
18 litigation that was similar to this. Mr. Tweed understood  
19 that they were representing his interests in that, and when  
20 this case started, he believed that they were representing  
21 his interests still. But, Fisher & Phillips wants to  
22 create a dividing line between those cases and this one.  
23 We don't think any such real dividing line exists, and we  
24 think what Mr. Tweed's impression was governs the lawyers'  
25 role here.

09:06:46

1                   When we look at what had to happen for  
2 this conflict waiver to be valid, of course it had to be  
3 informed consent. The client needed to know everything.  
4 The client needed to know what was going on with Ms. Radel,  
09:07:01 5 what was going on with ADP, what types of claims and -- and  
6 contribution could be made for this lawsuit.

7                   When we look at Rule 1.08 itself -- or 1.8  
8 itself, 1.8(g), we find the answer to this very, very  
9 simple question.

09:07:25 10                  A lawyer who represents two or more  
11 clients shall not participate in making an aggregate  
12 settlement of the claims of or against the clients unless  
13 each client gives informed consent in a writing signed by  
14 the client. The lawyer's disclosure shall include the  
09:07:42 15 existence and nature of all the claims or pleas involved  
16 and the participation of each person in the settlement.

17                  When we look at the conflict waiver or see  
18 what purports to be a conflict waiver, that does not exist  
19 here. There is an apportionment and a settlement -- a  
09:07:59 20 purported settlement of claims in the aggregate between  
21 Veritas and E & L. Ms. Radel, oddly, is not a party to  
22 that even though in every FLSA case, you know, as labor and  
23 employment lawyers, we know that personal liability is part  
24 of those cases, and it is certainly a potential liability.

09:08:23 25                  But what we have here ultimately is best

1 borne out by Mr. -- Mr. Tweed's affidavit himself. In his  
2 affidavit he says this: "In the complaint against Fisher &  
3 Phillips, we have alleged that our former counsel breached  
4 its fiduciary duties to us."

09:08:41

5 THE COURT: Just a moment.

6 MR. SCHEXNAYDER: I think I have to object on  
7 hearsay, Your Honor, the affidavit.

8 MR. BANES: What, in the opening statement?

9 THE COURT: That objection is sustained.

09:08:51

10 MR. BANES: Okay. All right. Well, Your  
11 Honor, the evidence will show that Mr. Tweed, when he  
12 entered into the conflict waiver, did not understand -- did  
13 not have full informed consent, and it was not conveyed to  
14 him all the limitations that Fisher & Phillips had.

09:09:12

15 When we are looking at the rule itself,  
16 1.06(b), we see what has to be disclosed and what has to be  
17 waived and what could be permitted.

18 It says, "A lawyer shall not represent a  
19 person if the representation of that person involves a

09:09:33

20 substantially related matter in which that person's  
21 interests are materially and directly adverse to the  
22 interests of another client of the lawyer or the lawyer's  
23 firm or reasonably appears to be or become adversely  
24 limited by the lawyer's or law firms' responsibility to

09:09:51

25 another client or to a third person or by the lawyers or

1 law firm's own interests.

2 "In those types of situations, it can only  
3 be waived if there are no adverse consequences from the  
4 common representation and the advantages and disadvantages  
09:10:06 5 are fully explained."

6 That did not happen here. Mr. --  
7 Mr. Tweed will testify about this, and he will explain what  
8 his impressions were, what his understanding was. And we  
9 will see from the documents involved how much Fisher &  
09:10:23 10 Phillips knew, what they didn't disclose and the conflict  
11 waiver, what's not in it.

12 What is ironic in this case is ultimately  
13 what was -- what wasn't disclosed was the primary cause for  
14 Fisher & Phillips' withdrawal because when they got to the  
09:10:40 15 point -- you know, there were several points that they  
16 needed new informed consent or new waivers. There were  
17 points at which they learned that ADP was contributing to  
18 what Mr. Radel and Mr. Tweed didn't know. That happened in  
19 April of 2016, yet they continued forward without telling  
09:10:59 20 Mr. Tweed.

21 Not until Ms. Radel came forward and said  
22 that, "I can't pay your fees anymore and I might not be  
23 able to pay the settlement," in effect breaching the same  
24 conflict waiver that they're trying to bind Mr. Tweed to  
09:11:13 25 today, that at that point, they decided to withdraw, only

1 when their fees were threatened.

2                   With that, we believe that the evidence  
3 will show and prove a breach of fiduciary duty, a breach of  
4 their contractual arrangement with Mr. Tweed, and if there  
09:11:33 5 is any -- if there isn't a contractual arrangement in  
6 certain degrees, that they got an advantage from him that  
7 wasn't reciprocated.

8                   Ultimately, this is not about how they  
9 approached this case. This is about how they approached  
09:11:49 10 their other clients with respect to Mr. Tweed, and they  
11 treated him very poorly.

12                   As the Court said in its recent decision  
13 about the summary judgment, it is Fisher & Phillips' duty  
14 and -- and it is their burden of proof today to show that  
09:12:06 15 that agreement, that conflict waiver, was fair to Mr.  
16 Tweed. There is a presumption of unfairness in these types  
17 of agreements when the party -- when the client that they  
18 are trying to enforce it against did not benefit at all  
19 from it, or did not -- it wasn't -- you know, the -- there  
09:12:33 20 is a presumption of unfairness where the client did not  
21 benefit from the transaction.

22                   Fisher & Phillips was paid by Mr. Tweed.  
23 Mr. Tweed had to pay the settlement in accordance with this  
24 apportionment ultimately, and he also paid our firm to get  
09:12:50 25 him out of things and to sue -- to pursue this case.

1                   So Mr. Tweed has lost several times where  
2 ultimately the -- the agreement he had with Veritas would  
3 have required that he pay none of that. And historically,  
4 that is exactly what happened.

09:13:09

5                   With that, I'll turn it over to my  
6 esteemed colleague, Your Honor.

7                   THE COURT: Any opening from the defense at  
8 this time?

09:13:19

9                   MR. SCHEXNAYDER: Yeah. Brief, Your Honor, if  
10 it is all right.

09:13:35

11                   I do agree with counsel when he says that  
12 Rule 1.06 of the disciplinary rules is the governing rule.  
13 That is the conflict of interest rule which states as  
14 follows: "A lawyer may represent a client when the clients  
15 are potentially adverse to each other if the lawyer  
16 reasonably believes the representation of each client will  
17 not be materially affected and each affected or potentially  
18 affected client consents to such representation after full  
19 disclosure of the existence, nature, implications and  
20 possible adverse consequences of the common  
21 representation."

09:13:52

22                   There is no requirement in the Texas rule  
23 that that consent be in writing. That is in the model  
24 rules that apply to the American Bar Association. In this  
25 case, we complied with both. We have a written waiver that

09:14:03

1 is five pages long, single spaced, goes in great detail to  
2 all the pros and cons of the joint representation.

3                   Also, there is no requirement in the Texas  
4 rule, but we also went a step further and suggested very  
09:14:23 5 strongly to Mr. Tweed that before he signs anything that he  
6 seek out independent counsel. And we will find out today  
7 if he did that. I have never deposed Mr. Tweed, but he was  
8 cautioned and recommended to seek independent counsel.

9                   I think the letter itself, which was  
09:14:41 10 ultimately signed by Mr. Tweed, is de facto a rebuttal of  
11 the presumption of unfairness because the letter itself  
12 complies with the rules. And then we will have Mr. Roppolo  
13 testify, if necessary, why he thought that this was in the  
14 best interest of both clients to have the joint  
09:15:00 15 representation.

16                   You didn't hear any representation by  
17 counsel that he is going to bring any lawyer to the  
18 contrary. I think in this kind of case where we're talking  
19 about what is ethical and what is commonly done in the  
09:15:12 20 industry of lawyers, we need to hear from someone on his  
21 side that what we did was wrong or in breach of duty. You  
22 are not going to hear that. That is one of the bases that  
23 we are going to be asking the Court to dismiss this case  
24 after the direct testimony of the plaintiff.

09:15:26 25                   We will address the other issues as the

1 case goes on, but I think you are going to see there was no  
2 taking advantage of anyone. This was a very standard issue  
3 conflict waiver. Mr. Tweed had the opportunity to go out  
4 and hire his own lawyer. He didn't do it. He saw the  
09:15:43 5 benefit of joint representation. He got the benefit of  
6 that joint representation because he didn't have to hire  
7 his own lawyer. He was able to share the fees with the  
8 other co-defendant, Veritas, in the case. That was a  
9 definite advantage to him. He had cost savings that he  
09:15:58 10 took advantage of. That is why he wanted to do the deal in  
11 the first place.

12 He came up with this arrangement directly  
13 with the other party, Ms. Radel, at Veritas, before he even  
14 talked to our clients about it. Our clients could have  
09:16:11 15 gone either way. They could have represented Veritas or  
16 they could have represented Veritas and Mr. Tweed. That  
17 was up to him. That's the choice he made. He signed the  
18 conflict waiver. He has never denied he signed the  
19 conflict waiver. And we think this case should be  
09:16:23 20 dismissed as a matter of law, Your Honor.

21 THE COURT: Plaintiff, call your first witness.

22 MR. BANES: Your Honor, we call Mr. Ed Tweed to  
23 the stand.

24 THE COURT: Mr. Tweed.

09:16:48 25 Mr. Tweed, if you will stand next to the

EDWARD J. TWEED - DIRECT BY MR. BANES

1 witness stand, face the clerk and raise your right hand.

2 (Witness sworn.)

3 THE WITNESS: I do.

4 THE CASE MANAGER: Thank you.

09:17:02 5 THE COURT: Mr. Tweed, please take the stand.

6 Mr. Tweed, we have a court reporter who is  
7 taking down the testimony and questions. Please allow the  
8 lawyers to finish their questions before you begin your  
9 answer. I will make sure that they extend to you that same

09:17:21 10 courtesy. Understand?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Very well.

13 Counselor.

14 MR. BANES: Your Honor, do you want us to stand  
09:17:26 15 at the podium?

16 THE COURT: Whatever your pleasure.

17 MR. BANES: Okay.

18 **EDWARD JOHN TWEED,**

19 duly sworn, testified as follows:

09:17:30 20 **DIRECT EXAMINATION**

21 BY MR. BANES:

22 **Q.** Mr. Tweed, can you, please, state your full name and  
23 current job for the record?

24 **A.** My name is Edward John Tweed, and I am the president  
09:17:44 25 of E & L Transfer.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. Were you sued in this case under the Fair Labor  
2 Standards Act?

3 A. Yes.

4 Q. Both your company and you individually?

09:17:55

5 A. Yes.

6 Q. Now, can you go back and tell me how -- what is your  
7 background, generally, sir?

09:18:15

8 A. I have always been in the trucking industry. My  
9 father was a trucker; and when I was in high school, he  
10 used to take me out and we would work on his pickup truck,  
11 picking up and delivering stuff for the neighbors and  
12 hauling it to the dumps, and, you know, just sharecropper,  
13 basically.

09:18:30

14 Q. Now, can you tell me -- can you go through and tell  
15 me what kinds of jobs you have had over the years? When  
16 did -- did you go to college?

09:18:51

17 A. No. I -- we didn't have the means at the time. We  
18 lived in a rural part of Pennsylvania, and I went down and  
19 grabbed a job at the airport, down at Newark Airport,  
20 about an hour-and-a-half away.

21 Q. What --

22 A. And I continued to work in the trucking and air  
23 freight business.

09:19:03

24 Q. So what do you -- do you have any legal training at  
25 all?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** Do you have any training in human resources?

3 **A.** No.

09:19:18

4 **Q.** All right. So how long did -- like how long did you  
5 work at Newark doing air freight?

6 **A.** Gosh, I think I was probably 18 to -- when I married  
7 my wife. That was probably maybe 18 years later. She  
8 was -- I was 33, I think, or something like that.  
9 Fifteen, 16 years.

09:19:44

10 **Q.** Now, so when you married your wife, Leslie, where did  
11 you -- where did you go then?

09:20:12

12 **A.** Well, we worked together at the -- at the airport at  
13 an air freight forwarder, and had a son. And then we went  
14 out to Colorado to work for another trucking company. So  
15 we stayed there for four years. And then the trucking  
16 industry had a strike, so that job pretty much ended. And  
17 one of the people that I was working with got transferred  
18 out to Sacramento, and they offered us a position out  
19 there in the trucking business.

09:20:34

20 **Q.** What did you do out there?

09:20:56

21 **A.** Well, I ended up buying a couple of trucks, because  
22 that's what my dad did, from FedEx Ground. When he passed  
23 away, I got a small settlement of \$30,000 from his  
24 checking account, so I bought a route from FedEx Ground  
25 and started delivering it. And, you know, then he -- I

EDWARD J. TWEED - DIRECT BY MR. BANES

09:21:28

1 did that for five or six years and ended up with five  
2 trucks. And then -- and then we -- DHL ran an ad in the  
3 paper that they were looking for independent contractors  
4 like us, and I responded to the ad, and they gave us  
5 some -- they gave us our first contract. And that's what  
6 I do now.

7 **Q.** When was that first contract, sir?

8 **A.** It was in, I think, like June of 2004.

09:21:43

9 **Q.** Okay. And so -- and that is what you have been doing  
10 since?

11 **A.** Yes.

12 **Q.** All right. Now, did you have locations in both  
13 California and Texas?

09:22:04

14 **A.** Well, what happened was that -- no. I had -- I  
15 had --

16 THE WITNESS: Your Honor, you want to listen to  
17 this? I mean, seriously, are you interested in it? Okay.  
18 I'm sorry.

19 THE COURT: He's asking the questions.

09:22:10

20 THE WITNESS: Okay.

09:22:38

21 **A.** So in 2004, DHL Express started the domestic  
22 business, so I was in, basically, California. Our  
23 contract was in California. And in 2008, 2009, basically,  
24 they were losing a lot of money, so they got out of the  
25 domestic business and they went from 700 owners down to 20

EDWARD J. TWEED - DIRECT BY MR. BANES

1 owners, and I was one -- one of the -- one that was picked  
2 to stay in California. So, that was good, otherwise, we  
3 were out of work.

4 And then soon after that -- well, it was  
09:23:01 5 2009, the fellow here in Texas, they -- they failed to,  
6 from what I understand, pay the severance money to the  
7 employees that they were giving and defaulted on the other  
8 contract. And I was the only one that showed up for the  
9 interview for the Texas one, so I kind of won it by  
09:23:28 10 default.

11 Q. All right. Now, at the time you entered into the  
12 Texas contract with DHL, did you -- how did -- how did --  
13 did you set it up directly or hire employees directly?

14 A. No.

09:23:43 15 Q. All right. So what did you choose to do?

16 A. I brought the same hiring agent and personnel company  
17 that I had in California out to Texas to set it up.

18 Q. And who was that?

19 A. Marcia Radel. Marcia Radel at the time was operating  
09:24:00 20 under a company named HireGround; and when she got out to  
21 Texas, she, for whatever reason, decided to change her  
22 name to Veritas.

23 Q. How many clients did she have with Veritas?

24 A. As I understand it, only one.

09:24:17 25 Q. Who was that?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** E & L Transfer.

2 **Q.** All right. Now, can you turn to page -- or Exhibit  
3 4, sir? There are some books up there. Go to Book 1.

4 **A.** Okay.

09:24:41

5 **Q.** All right, sir. Can you identify this document for  
6 the record?

7 MR. SCHEXNAYDER: I'm sorry. What exhibit are  
8 we in?

9 MR. BANES: Exhibit 4.

09:24:54

10 **A.** This is the -- this is the client agreement between  
11 E & L Transfer and Marcia Radel of Veritas.

12 BY MR. BANES:

13 **Q.** Now, is this -- is this just a payroll service -- or  
14 is this just a payroll agreement?

09:25:10

15 **A.** No. I paid Veritas 40 percent of -- of the  
16 settlement from DHL to -- to hire, pay and to retain the  
17 employees.

18 **Q.** Now, have you since hired -- have you since hired the  
19 employees that Veritas was doing at the time?

09:25:32

20 **A.** Yes. I believe over 90 percent of the employees  
21 stayed on when -- when I changed them to hourly.

22 **Q.** All right. Now, when did -- when did you basically  
23 assume the responsibility for the employees?

24 **A.** January of 2016.

09:25:52

25 **Q.** All right. So before that -- so what was -- who

EDWARD J. TWEED - DIRECT BY MR. BANES

1 was -- who were they employees of before that?

2 **A.** They were employees of Marcia Radel and Veritas.

3 **Q.** Looking at the agreements -- and you have a payroll  
4 services company now?

09:26:11 5 **A.** We use a company called Paycom.

6 **Q.** And how much do you pay them for the payroll service?

7 **A.** Between one-and-a-half and two percent.

8 **Q.** All right. So then looking -- taking a look at page  
9 2 of Exhibit 4, sir --

09:26:28 10 **A.** Right.

11 **Q.** -- there is a markup percentage in there.

12 Do you see that?

13 **A.** Yes. She got 40 percent of the settlement, the  
14 weekly settlement.

09:26:38 15 **Q.** So of -- and let's see.

16 All right. Now -- all right, sir. Now,  
17 taking a look at paragraph 17A at the bottom of page 2,  
18 does that list some of Veritas' responsibilities under the  
19 agreement?

09:27:17 20 **A.** Yes. It says "Veritas will recruit, screen, hire  
21 employees" --

22 MR. SCHEXNAYDER: Object to the responsiveness.  
23 I think that was a yes or no.

24 THE COURT: Overruled.

09:27:29 25 Next question.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. Yeah. Mr. Tweed, taking a look at -- taking a look  
3 at 17F, what does that say? Can you read that out loud,  
4 17F? It is on page 3.

09:27:44

5 A. 17F says, "Client will maintain its premises and work  
6 areas in compliance with all applicable health and safety  
7 laws, regulations, and ordinances. Client will further  
8 comply at its own" --

9 Q. Hold on just a second, sir. Just 17F.

09:28:02

10 A. Oh, okay.

11 Q. 17A --

12 A. Okay. That was A.

13 Q. Yeah.

14 A. Sorry. "Veritas has sole responsibility to determine  
15 and set the level of compensation and fringe benefits for  
16 its employees."

09:28:09

17 Q. How is that important for this case?

18 MR. SCHEXNAYDER: Objection; calls for a legal  
19 conclusion.

09:28:22

20 THE COURT: Rephrase, Counselor.

21 BY MR. BANES:

22 Q. What -- what importance did you see that that had  
23 with respect -- as between you and Veritas governing the  
24 employees?

09:28:32

25 A. Well, it had everything to do with it. Veritas came

EDWARD J. TWEED - DIRECT BY MR. BANES

09:28:55

1 to Texas with her staff and her human resources department  
2 and collected all of the current at that time employees'  
3 pay stubs and brought them all into a room. Because there  
4 were multiple different groups of contractors there, so  
5 everybody's pay was day rates, and they were all  
6 different.

09:29:11

7 So she brought them all in and sat them  
8 down and averaged them out and then had them agree to pay  
9 what the average over the group of them was as their new  
10 pay.

11 Q. Now, you said they were paid a day rate?

12 A. They were paid by the day.

13 Q. And that was ultimately the basis for the lawsuit by  
14 Walker, wasn't it?

09:29:20

15 A. That's correct.

16 Q. All right. Now, did you -- was it -- did you  
17 determine that they would be paid day rates?

18 A. I had never been in the state of Texas in my life  
19 other than to come down here to --

09:29:35

20 MR. SCHEXNAYDER: Objection; responsiveness.

21 A. -- a relative's --

22 THE COURT: Just a moment. Occasionally, the  
23 lawyers will object.

24 THE WITNESS: Okay.

09:29:43

25 THE COURT: When you hear an objection from

EDWARD J. TWEED - DIRECT BY MR. BANES

1 either lawyer, stop talking --

2 THE WITNESS: Okay. Sorry, sir.

3 THE COURT: -- no, no -- to give me the  
4 opportunity to deal with the objection.

09:29:51

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Counsel, what is your legal  
7 objection?

8 MR. SCHEXNAYDER: Nonresponsive, Your Honor.

9 THE COURT: Overruled.

09:30:01

10 BY MR. BANES:

11 Q. Okay, sir.

12 THE WITNESS: What does overruled mean, Your  
13 Honor?

14 THE COURT: Very good.

09:30:07

15 THE WITNESS: Sorry.

16 THE COURT: Yes. When I am dealing with an  
17 objection, I will do one of two things: I will say  
18 "overruled," meaning the objection has no legal merit for  
19 the point they're making --

09:30:21

20 THE WITNESS: Oh.

21 THE COURT: -- or I will say "sustained,"  
22 meaning the objection has legal merit and that the attorney  
23 is correct in the objection.

24 THE WITNESS: Thank you, sir.

09:30:30

25 THE COURT: All right. Counselor, your next

EDWARD J. TWEED - DIRECT BY MR. BANES

1 question.

2 MR. BANES: All right, sir.

3 BY MR. BANES:

09:30:35

4 Q. Sir, did you have anything to do with establishing  
5 the day rate for the employees?

6 A. No.

7 Q. All right. Who did that?

8 A. Marcia. And she had a human resource lady, and I  
9 don't remember the human resources girl's name.

09:30:49

10 Q. Was that Norma -- Nora Gonzalez?

11 A. It was Nora Gonzalez.

12 Q. All right. So -- all right. So, there is another  
13 provision under 17B that I want you to look at, sir. If  
14 you can turn to -- on page 3 of Exhibit 4.

09:31:26

15 A. 17. Okay. What is it now?

16 Q. Take a look at 17B and then D under there.

17 A. Okay.

18 Q. Now, that one says, "It is client's responsibility to  
19 ensure that all of its wage and hour practices affecting  
20 Veritas employees are in compliance with state and federal  
21 laws."

09:31:41

22 Now, did you set the day rate?

23 A. No.

24 Q. Was that your practice?

09:31:53

25 A. No.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. All right. Whose practice was that?

2 A. Marcia collected, as I said before, the pay stubs  
3 from the employees that were already in the building.

4 What she told me was that she grouped them together,

09:32:08

5 averaged them out and that is what she offered her  
6 employees.

7 Q. Now, did she ever tell -- did -- at what point did  
8 she tell you that a day rate was not proper?

9 A. It was in -- sometime in -- sometime in August where

09:32:30

10 she approached me and said that she had gotten bad  
11 information and that she was settling some lawsuits over  
12 that bad information that she got regarding the pay rates.

13 Q. Do you remember the year?

14 A. I would say it was 2015 -- or early 2015.

09:32:54

15 Q. Okay. Well, we will go -- actually, take a look at  
16 Exhibit 20 for a second, sir. Keep your hand in that.

17 A. Exhibit 20. Okay. Yeah.

18 Q. Can you identify this document for the record, sir?

19 A. Yeah. It's -- it looks like it's an e-mail from

09:33:35

20 Marcia to me in August of 2014, I guess that is.

21 Q. All right.

22 A. Where she starts talking about the day rates.

23 Q. So was this the -- was this the first time that you  
24 knew about this?

09:33:46

25 A. That would make sense to me, yes.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. So the year was 2014?

2 A. Yes.

3 Q. August of 2014?

4 A. Yeah.

09:33:54

5 Q. All right. Sir, can we --

6 MR. BANES: I would like to offer Exhibit 20 --  
7 Exhibit 4 and 20 for the record. Oh, I'm sorry, Your  
8 Honor. I would like to offer Exhibit 4 and 20.

9 THE COURT: Any objection?

09:34:04

10 MR. SCHEXNAYDER: No, Your Honor.

11 THE COURT: Plaintiff's 4 and Plaintiff's 20  
12 are admitted without objection.

13 BY MR. BANES:

14 Q. Turning back to Exhibit 4, sir. Can you turn to page  
15 4 and then turn to paragraph 22?

09:34:41

16 A. Uh-huh.

17 Q. Can you read that into the record, sir?

18 A. Okay. It says, "Veritas agrees to indemnify and  
19 defend client from any and all losses, liability,

09:35:08

20 expenses, including court costs, and attorney fees, and  
21 claims for damages of any nature whatsoever which client  
22 may incur, suffer, become liable for, or which may be  
23 asserted or claimed against client as the basis that

24 Veritas' actions failed to comply with any federal, state,

09:35:30

25 or local laws in the capacity as employer of the employees

EDWARD J. TWEED - DIRECT BY MR. BANES

1 assigned to the client."

2 Q. What did you -- what do -- what was your view of what  
3 this provision did with respect to -- as between E & L and  
4 Veritas?

09:35:44

5 A. My clear view of that was that she was going to  
6 indemnify me against any lawsuits and protect me if the --  
7 or represent me in case any of her employees tried to  
8 organize and that she did this with Mason and Ozen and  
9 Emerson and Bellard. So I had no -- no belief that that  
10 was something that she wasn't going to continue doing.

09:36:11

11 Q. Now, those cases that you just mentioned, Mason,  
12 Ozen, Emerson and Bellard, those are prior cases, prior to  
13 Walker?

09:36:28

14 A. Yeah. The employees actually were telling me -- her  
15 employees were contacting me that -- asking me if I knew  
16 that there was -- people were getting paid money --

17 MR. SCHEXNAYDER: Object to the responsiveness,  
18 Your Honor.

19 THE COURT: Sustained.

09:36:40

20 Next question.

21 BY MR. BANES:

22 Q. All right, sir. Let's ask -- let's ask that a  
23 different way.

24 Did -- all right. Take a look at

09:36:53

25 paragraph 23 for a moment, sir.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Uh-huh.

2 **Q.** Can you read that out loud?

3 **A.** "Veritas agrees to indemnify and defend client from  
4 any and all losses, liability, expenses, including court  
5 costs and attorneys' fees, any claims for damages of any  
6 nature whatsoever which client may incur, suffer, become  
7 liable for, or which may be asserted or claimed against  
8 client on the basis that Veritas has materially breached  
9 any of its responsibilities as set forth in Section 17A

10 above."

11 **Q.** Now, I am going to -- take a look at Exhibit 16 for  
12 one moment, sir. I just want to get the timeline in time.

13 **A.** Exhibit 16?

14 **Q.** Keep your hand there in the other exhibit, Exhibit 4.

15 **A.** Okay.

16 **Q.** All right. Now, what is the -- what is the document  
17 in Exhibit 16, sir?

18 **A.** It's a document from Fisher & Phillips and it talks  
19 about the Matthew Walker E & L Transfer, L.L.C., Civil  
20 Action 4-15-2428.

21 **Q.** Is this the purported conflict waiver?

22 **A.** I guess -- I assume it is, yes.

23 **Q.** Well, take a look at it, sir. Just read through it.

24 **A.** "Potential conflict." Yes, this is the conflict  
25 letter.

EDWARD J. TWEED - DIRECT BY MR. BANES

09:39:09

1 Q. All right. Now, looking through this document, do  
2 you see any of the -- these provisions that we have just  
3 gone over? Do you see any of these provisions in  
4 exhibit -- from Exhibit 4 specifically discussed in  
5 Exhibit 16?

6 A. No.

09:39:35

7 Q. All right. Now, did -- you heard Mr. Schexnayder  
8 speaking earlier that under Texas law he believes that a  
9 conflict waiver could be oral as well. So I asked you did  
10 either Ms. Wynne or Mr. Roppolo talk to you about these  
11 provisions from Exhibit 4 before Exhibit 16 was executed?

12 A. No.

09:40:14

13 MR. BANES: Your Honor, I would like to -- oh,  
14 I'm sorry. Your Honor, I would like to offer Exhibit 16  
15 for the record.

16 MR. SCHEXNAYDER: No objection, Your Honor.

17 THE COURT: Plaintiff's 16 is admitted without  
18 objection.

19 BY MR. BANES:

09:40:33

20 Q. Looking back to Exhibit 16 for a moment, sir, do you  
21 think this document -- do you think this document is a  
22 valid waiver with respect to you?

23 MR. SCHEXNAYDER: Your Honor, I object on the  
24 basis that is in his -- this witness --

09:40:46

25 THE COURT: Specific legal objection.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. SCHEXNAYDER: Calls for a legal conclusion.

2 THE COURT: Sustained.

3 MR. BANES: Your Honor, I ask that --

4 THE COURT: The objection has been sustained.

09:40:54 5 Your next question.

6 MR. BANES: Okay, Your Honor.

7 BY MR. BANES:

8 Q. Mr. Tweed, do you -- all right. Mr. Tweed, what do  
9 you think about this -- this conflict waiver?

09:41:12 10 A. I think that it should never have happened. It  
11 should never have been a document.

12 Q. Why?

13 A. Because I was already indemnified and I was falsely  
14 lead to believe that I had to, to become a client of  
09:41:28 15 Fisher & Phillips, because Ms. Radel and Veritas clearly  
16 made it -- Miss Wynne -- this Alia Wynne and Marcia Radel  
17 clearly stated to me that they had no liability to respond  
18 to the -- to the lawsuit, that I was totally the only one  
19 that was included, and they had no responsibility, and  
09:41:52 20 that my window of opportunity to respond to the lawsuit  
21 was closing quickly, and that I am going -- I was going --  
22 I was going to potentially lose my business.

23 Q. Now, did you feel any pressure from -- now, did you  
24 feel any pressure from Ms. Wynne to agree to that?

09:42:10 25 A. I -- I thought that -- that she totally intimidated

EDWARD J. TWEED - DIRECT BY MR. BANES

1 me.

2 Q. All right. Now, with respect -- how many times prior  
3 to the conflict waiver being executed did you talk to  
4 Ms. Wynne?

09:42:23

5 A. Never.

6 Q. You talked to her once, right?

7 A. Yeah, but --

8 MR. SCHEXNAYDER: Your Honor, object.

9 BY MR. BANES:

09:42:31

10 Q. How many times --

11 THE COURT: Just a moment.

12 MR. SCHEXNAYDER: Leading.

13 MR. BANES: All right. Go ahead.

14 THE COURT: Don't lead your witness. But...

09:42:36

15 MR. BANES: All right, Your Honor. I

16 understand.

17 BY MR. BANES:

18 Q. You just said that Ms. Wynne talked to you.

19 A. Yeah. And that's -- she -- what happened was I

09:42:45

20 was -- I was contacted by Ms. Wynne. She said that she  
21 represented Veritas and Marcia Radel and that Marcia felt  
22 it was important for her to notify me that I needed legal  
23 counsel because she wasn't -- she wasn't being sued in  
24 this particular case.

09:43:13

25 Q. Now, her advice that she was just representing

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Ms. Radel and Veritas, was that confusing to you?

2 **A.** Very confusing.

3 **Q.** Why was that?

4 **A.** Well, because she had been representing, from what I  
09:43:25 5 understood, Veritas in all of the prior lawsuits that were  
6 all similar in nature.

7 **Q.** Was she representing you, too?

8 **A.** Well, I thought she was.

9 **Q.** All right. Was that your understanding?

09:43:38 10 **A.** It was my understanding, because in -- in three of --  
11 three of the four suits, it named both parties, and in  
12 one particular one it didn't even name Veritas, and they  
13 still handled it, following the contracts I had with them  
14 to indemnify me.

09:43:57 15 **Q.** Do you remember when this -- when this one  
16 conversation with Ms. Wynne was?

17 **A.** It was -- it was -- it was a real short period of --  
18 between the time -- I mean, it -- it was -- it was pretty  
19 much a blur. But, you know, once she called me and told  
09:44:15 20 me that I had to have representation to the time the  
21 conflict waiver was written, I -- I really didn't have any  
22 idea what was going on at that point.

23 **Q.** Did she make -- did she make you feel like you  
24 couldn't -- couldn't have any other representation?

09:44:32 25 **MR. SCHEXNAYDER:** Objection; leading.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: Overruled.

2 **A.** She made me feel like I was in a bad position and  
3 that she was there to help.

4 BY MR. BANES:

09:44:40

5 **Q.** Did she -- did she make -- did she make you feel like  
6 that Fisher & Phillips was the only one that could  
7 represent you?

09:44:52

8 **A.** She did. She made -- she made it sound that if I  
9 didn't choose them, that I was going to have to go back  
10 and start all over from the beginning for all of the other  
11 lawsuits, and that they would be drug -- would be drug  
12 back into it and that if I didn't -- you know, they had  
13 already done all the groundwork, so it was going to be a  
14 huge cost savings for me because they had already done all  
15 the research. They already had the documentation. They  
16 had already went to DHL, got information from the G.P.S.  
17 locators and so on so that it would be a lot easier for  
18 them to just simply represent me as well.

09:45:09

19 **Q.** Now, did you feel you had an ability to go to anyone  
20 else at that point?

09:45:26

21 **A.** She made it sound as it would be a really bad choice  
22 for me.

23 **Q.** All right. Now, with respect to the conflict waiver,  
24 Exhibit 16, sir, the content of that letter and the  
25 apportionment in there, who came up with that?

09:45:43

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Alia and Marcia.

2 **Q.** Did you have anything to do with that?

3 **A.** No.

4 **Q.** All right. Prior to her talking to you on September

09:45:57

5 16th of 2015, had you had any idea that that would be  
6 improper?

7 **A.** I no idea.

8 **Q.** So you heard Mr. Schexnayder during his opening

9 statement say that the conflict waiver was just

09:46:18

10 memorializing your agreement with Ms. Radel.

11 Would you agree with that?

12 **A.** What I was told by Alia was that all they had to do  
13 was draft some documents that would make it legal for her  
14 to represent the two of us.

09:46:35

15 **Q.** Now, did she -- now, did -- did you come up with  
16 that?

17 **A.** No. I explained to her, and then she got upset when  
18 I told her, I said, "Why do I have to" -- "I am already  
19 indemnified from this by" -- "by Marcia and Veritas, and  
09:46:52 20 it's been shown over and over again. Why now do I need  
21 another lawyer since this is her responsibility?"

22 **Q.** What did she say to that?

23 **A.** She said that she had --

24 THE COURT: Counsel, I apologize. You keep

09:47:07

25 saying "she." I am --

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. What did Ms. Wynne say to that?

3 MR. BANES: I'm sorry, Your Honor.

4 THE COURT: Thank you.

09:47:12

5 A. What she kept over and over explaining to me was that  
6 Marcia and Veritas were not being sued in this particular  
7 lawsuit, that I personally and E & L Transfer, L.L.C. were  
8 being sued alone and that we failed to reply properly to  
9 the response to the letter that was sent out, which I

09:47:38

10 don't even know if I ever even saw it, because I -- I  
11 never paid any attention. I mean, these cases were going  
12 on without me having any idea.

13 Q. Now, did you have -- did you know any different  
14 that -- at that point, during that September 16th

09:47:54

15 conversation with Ms. Wynne, that -- that E & L and you  
16 were the only ones sued?

17 A. No.

18 Q. Now that you have had a chance to look at some of the  
19 documents, was that accurate?

09:48:06

20 A. No. They -- when we looked through the documents, it  
21 was -- it was clear to me that -- and Alia even states  
22 that, you know, this is -- we're already -- we're already  
23 working on the Bellard case. We have already processed  
24 the Mason, Ozen and Emerson cases, so they already had the  
25 information --

09:48:28

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: Just a moment. Just a moment.

2 **A.** -- of what we were doing.

3 THE COURT: Do you have a legal objection?

4 MR. SCHEXNAYDER: Nonresponsive.

09:48:34 5 THE COURT: Overruled.

6 You may continue.

7 BY MR. BANES:

8 **Q.** Keep going, sir.

09:48:42 9 **A.** So, Alia, in the documents, clearly shows that she  
10 was already working with Marcia on this and advised her  
11 that the case was identical to the previous cases.

12 **Q.** All right. Now, sir, if you could -- you might have  
13 to -- let's see. I think it's -- in Book 1 there, sir,  
14 could you turn to Exhibit 41?

09:49:55 15 Mr. Tweed, I'll represent to you that this  
16 is an e-mail between Ms. Wynne and Ms. Ropollo on August  
17 25th, 2015.

18 Can you look at the second paragraph --

09:50:12 19 THE COURT: Counsel, let me interrupt you  
20 because you just said this was an e-mail between Ms. Wynne,  
21 W-Y-N-N-E, and Ms. Ropollo.

22 MR. BANES: Oh, Mr. Ropollo, Your Honor.

23 THE COURT: All right.

09:50:30 24 MR. BANES: I didn't mean to -- I didn't mean  
25 to do that.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. So, yes, this is an e-mail between Ms. Wynne and  
3 Mr. Ropollo.

4 Do you see that, sir?

09:50:39

5 A. Yes.

6 Q. On August 25th of 2015?

7 A. Yes.

8 Q. All right. Now, at this point did you know about the  
9 Walker suit?

09:50:55

10 A. August 2015? August -- I got the call about the suit  
11 from Alia on or around September 16th of 2015 --

12 Q. Well, you didn't really know about it before then?

13 A. It was -- like I said earlier, there was rumors of  
14 law -- lawsuits from my employees, but I -- I didn't pay  
15 any attention to them.

09:51:25

16 Q. Well, prior to that call with Ms. Wynne, you hadn't  
17 been contacted by Ms. Wynne or anyone at Fisher & Phillips  
18 or Ms. Radel about the lawsuit?

19 A. No.

09:51:37

20 Q. Is that no?

21 A. No.

22 Q. All right. Now -- so at this point -- take a look at  
23 the second paragraph, Mr. Tweed. It says, "Marcia's  
24 initial reaction was that she does not want to become  
25 involved in this suit unless and until Tweed brings her in

09:51:51

EDWARD J. TWEED - DIRECT BY MR. BANES

1 as a party. She felt responsible for the other lawsuits  
2 because he was acting on her advice regarding the day  
3 rate, which she had apparently gotten from a PEO."

09:52:08

4 All right. Did -- all right. Now, you  
5 already testified that the prior lawsuits she was already  
6 indemnifying you for, right?

7 **A.** That's correct. Yes.

8 **Q.** So this part of it is accurate?

9 **A.** That's correct.

09:52:17

10 **Q.** Now, did -- did -- when Ms. Wynne called you, did she  
11 ever tell you anything about Ms. Radel's resistance, you  
12 know --

13 **A.** No.

14 **Q.** -- to joining the lawsuit?

09:52:28

15 Did she tell you that she was already  
16 advising Ms. -- Ms. Radel about how to avoid the lawsuit?

17 **A.** No.

18 **Q.** Now, taking a look at the bottom of the page, she  
19 shifts to Bellard. What was the Bellard case?

09:52:58

20 **A.** I don't even know who these folks were, but they were  
21 people that sued Veritas over the day rates.

22 **Q.** So that was another one of these cases --

23 **A.** Exactly -- as I understand the exact same case.

09:53:24

24 **Q.** All right. Now, take a look at the first paragraph,  
25 sir, and where it says, "Their pay was changed finally in

EDWARD J. TWEED - DIRECT BY MR. BANES

09:53:42

1 March." Well, it says, "She said she told Ed Tweed that  
2 he has to discontinue the day rate back in January of '15  
3 but Ed dragged his feet in changing the system because he  
4 was afraid that employees would leave their  
5 compensation" -- or "would leave if their compensation  
6 changed."

09:53:53

7 Was that -- is that an accurate portrayal  
8 of what actually happened?

9 **A.** The accurate portrayal was -- what I explained to  
10 Marcia was that, you know, "You hired these people, and  
11 now you're coming to me and you are telling me you made a  
12 mistake. You are going" -- "you are going to have to" --  
13 "you are going to have to find a way to properly  
14 compensate them so that they don't get damaged."

09:54:09

15 **Q.** Now, she told you about this in August of 2014, as  
16 you testified earlier?

17 **A.** Right.

18 **Q.** Now, did you tell her that they needed to get in  
19 compliance at that time?

09:54:20

20 **A.** Yes.

21 **Q.** Did you tell her how to do it?

22 **A.** No.

23 **Q.** Did you ask her how to do it?

24 **A.** No.

09:54:26

25 **Q.** Did you -- did you leave it up to her to come up with

EDWARD J. TWEED - DIRECT BY MR. BANES

1 a compliant way?

2 **A.** Yes.

3 **Q.** All right. Now, did -- take a look at --

4 MR. BANES: First of all, Your Honor, I would

09:54:40

5 like to admit Exhibit 124 -- or 41 for the record.

6 THE COURT: Exhibit -- Plaintiff's 41?

7 MR. BANES: Plaintiff's Exhibit 41.

8 THE COURT: Any objection?

9 MR. SCHEXNAYDER: No, Your Honor.

09:54:54

10 THE COURT: Plaintiff's Exhibit 41 is admitted  
11 without objection.

12 THE WITNESS: Your Honor, is there any way I  
13 could have my water down there?

14 THE COURT: Absolutely.

09:55:04

15 THE WITNESS: I am dried out here.

16 BY MR. BANES:

17 **Q.** Sir, can you take a look at Exhibit 7?

18 **A.** Uh-huh.

19 **Q.** What is this document, sir?

09:56:14

20 **A.** This is Marcia's notice to the employees that she  
21 was -- she was going to make a -- she was going to make a  
22 change in the way they got paid.

23 **Q.** All right. Now, I notice it is on Veritas  
24 letterhead. Did you have any input into this document?

09:56:37

25 **A.** Absolutely not.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. Did you tell her what to say? Did you tell Ms. Radel  
2 what to say in this?

3 A. Absolutely not.

4 Q. Was this solely her, Ms. Radel, that did this?

09:56:47

5 A. Yes.

6 Q. All right. Now, take a look at -- now, did -- did  
7 Ms. Radel tell you that this was going to be compliant?

8 A. This letter?

9 Q. Well, the changes were going to -- did she ensure

09:57:06

10 you --

11 A. Yes.

12 Q. -- that the changes were going to be --

13 A. Yes.

14 Q. -- compliant?

09:57:09

15 A. She said that she had done a mathematical study. She  
16 had tested a mathematical study that would allow the  
17 employees to make the same amount of money paying them  
18 through a formula that she had created.

19 Q. Now, take a look at Exhibit 8.

09:57:38

20 MR. BANES: Oh, first of all, Your Honor, I  
21 would like to admit Exhibit 7 for the record, please.

22 THE COURT: Any objection?

23 MR. SCHEXNAYDER: No, Your Honor.

24 THE COURT: Plaintiff's 7 is admitted without

09:57:46

25 objection.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. Sir, can you identify Exhibit 8 for the record?

3 A. Well, it's a letter from Marcia.

4 Q. Ms. Radel?

09:58:17

5 A. Marcia Radel from Veritas, explaining to the -- the  
6 employees how they were now going to be paid.

7 Q. Now, was this document later used against you in  
8 the -- in this -- in this case?

09:58:43

9 A. This document -- yes. I mean, yeah. It was -- let  
10 me think of a better way to say that.

11 It was -- it was used in the lawsuit, yes.

12 Q. All right. Now, did they -- did Ms. Radel tell you  
13 that this was -- the way she had calculated would be  
14 proper when she issued it?

09:59:03

15 A. Yes.

16 Q. All right. Now, did you have anything to do with  
17 coming up with this formula --

18 A. No.

19 Q. -- that is contained in Exhibit 8?

09:59:16

20 A. Had no idea what she was talking about, to be honest  
21 with you.

22 Q. Taking a look at Exhibit 25, Mr. --

23 MR. BANES: Actually, can I -- I would like to  
24 admit Exhibit 8 for the record, sir.

09:59:42

25 MR. SCHEXNAYDER: No objection.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: Plaintiff's 8 is admitted without  
2 objection.

3 BY MR. BANES:

10:00:00

4 Q. All right. Taking a look at Exhibit 25, Mr. Tweed,  
5 can you identify this document for the record, please?

10:00:39

6 A. This is -- this is a document from Marcia Radel  
7 from -- now she changes for some reason back to  
8 HireGround, which is her California company -- to -- to  
9 Clint Straitwell and Esmerelda Cox about adding hours, I  
10 believe, to the mechanics.

11 Q. Is this the underlying calculations that were used in  
12 Exhibit 8?

10:00:57

13 A. Yes. It's just an amended -- she amended this  
14 particular payroll for this -- for the mechanic, it  
15 appears.

16 Q. And that -- and did you have any input into this?

17 A. No.

18 Q. Was this -- now, did Ms. Radel assure you this was  
19 compliant with the Fair Labor Standards Act?

10:01:09

20 A. I have never seen this document. But...

21 Q. Well, it is sent to -- sent to you.

22 A. Yeah, I --

23 THE COURT: Just a moment.

24 MR. BANES: I'm sorry.

10:01:17

25 THE COURT: Mr. Tweed, you're doing it a little

EDWARD J. TWEED - DIRECT BY MR. BANES

1 bit more now. So, please allow the lawyers to finish their  
2 question completely before you answer.

3 THE WITNESS: All right. Great. I'm sorry,  
4 Your Honor.

10:01:28

5 THE COURT: Very well.

6 Counselor.

7 MR. BANES: Thank you, Your Honor.

8 BY MR. BANES:

9 Q. Well, sir, you were cc'd on the document there, see?

10:01:35

10 A. Yeah. It's a -- it's a simple document between the  
11 payroll departments. She -- Joni Lance was her payroll  
12 department person, so I didn't see any reason to study the  
13 document.

14 Q. Well, as far as you were aware, Ms. Radel was acting  
15 in compliance with the Fair Labor Standards Act?

10:02:01

16 A. Yes.

17 Q. She didn't tell you any different? You're fine, sir.  
18 There is no objection right now.

19 A. Okay.

10:02:13

20 Q. Now, who was Clint -- who was Clint Straitwell and  
21 Esmerelda Cox?

22 A. They were employees of -- of Veritas.

23 Q. Now, who -- how was --

24 MR. BANES: Judge, can we ---move to admit

10:02:35

25 Exhibit 25, sir.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. SCHEXNAYDER: No objection.

2 THE COURT: Plaintiff's 25 is admitted without  
3 objection.

4 BY MR. BANES:

10:02:50

5 Q. Who was Clint Straitwell, sir?

6 A. He was the supervisor employee for Veritas.

7 Q. Now, how many employees did -- up through the end of  
8 2015, how many employees did E & L have?

10:03:11

9 A. I was the only employee; and I didn't take a  
10 paycheck, so I had no employees.

11 Q. What was the -- were the managers and supervisors  
12 also employed by Veritas?

13 A. That's correct. Yes.

14 Q. Was Mr. Straitwell an example of one of those?

10:03:24

15 A. Yes.

16 Q. How about Ms. Cox?

17 A. Yes. She was employed by Veritas.

18 Q. Now, taking a look at -- we were talking earlier  
19 about the markup that was paid. Did you actually pay that  
20 to Veritas, that level of markup for those employees, the  
21 40 percent?

10:03:38

22 A. Yes, I did.

23 Q. All right. Take a look at Exhibit 10.

24 Sir, can you identify the series of

10:04:09

25 documents in Exhibit 10 for the record?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Okay. This is a -- a document -- page -- page 2 is a  
2 payroll statement from Veritas.

3 **Q.** Well, take a look at the cover page under Exhibit 10,  
4 sir.

10:04:47

5 Did you send me these invoices?

6 **A.** Yes.

7 **Q.** And what were these invoices supposed to represent?

8 **A.** These are the -- can I look at the invoices?

9 **Q.** Yes, sir.

10:05:00

10 **A.** The invoices. I must be missing something here.  
11 There is a whole stack of payroll invoices here.

12 **Q.** Yes, sir. That's what they are. These are the  
13 payroll invoices between Veritas and E & L between 2013  
14 and 2015, right?

10:05:28

15 **A.** Right.

16 **Q.** All right. Now, do these represent -- do these show  
17 the 40 percent markup that was paid?

18 **A.** Yes.

10:05:41

19 **Q.** Now -- and do these also show -- like, for example,  
20 you said that Mr. -- now, who -- who was responsible  
21 when -- when hours were being tracked? When they  
22 ultimately started being tracked in 2015, who were the --  
23 who -- which employees were responsible for doing that?

24 **A.** Marcia had managers in each location.

10:06:00

25 **Q.** Now -- and so the manager -- but the managers were

EDWARD J. TWEED - DIRECT BY MR. BANES

1 employed by who?

2 **A.** Veritas.

3 **Q.** All right. So, for example, turn to page --

4 MR. BANES: I apologize, Your Honor. I don't

10:06:14 5 have Bates stamps on these.

6 BY MR. BANES:

7 **Q.** Katie Skorupinski, was she a manager?

8 **A.** She was a manager/supervisor.

9 **Q.** All right. Take a look at the invoice dated June

10:06:38 10 7th, 2015.

11 THE COURT: Just a moment.

12 MR. BANES: May I object, Your Honor?

13 Repetitive and irrelevant.

14 THE COURT: What is the relevance of this

10:06:44 15 portion in regards to the breach of fiduciary duty and

16 alternatively your breach of contract claims, Counsel?

17 MR. BANES: Your Honor, we're anticipating that

18 they are going to try to argue on the indemnity agreement

19 didn't apply because -- because their -- because the

10:07:04 20 decisions and because the -- the matters at issue were

21 decided by E & L rather than Veritas.

22 In their defense, during the deposition,

23 that's what they explained, was that the certain indemnity

24 provisions didn't apply to them so they didn't discuss

10:07:22 25 them.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: So, in regards to getting into the  
2 weeds on the invoices and correspondence, ultimately you're  
3 going to ask me to make a determination on breach of  
4 fiduciary duty. I'm trying to get the tie --

10:07:35

5 MR. BANES: Oh, well, yes, Your Honor. I mean,  
6 the point is, is that even the people that tracked the  
7 hours were Veritas employees. So the managers were Veritas  
8 employees. Everyone is Veritas employees. And so when you  
9 look at the indemnity agreement, it was important to at

10:07:52

10 least discuss those items with Mr. Tweed before any valid  
11 conflict waiver could be -- could be entered into, because  
12 an apportionment would require a discussion of all those  
13 things, and we are going to show that it was never done.

10:08:06

14 THE COURT: Very well. The objection is  
15 overruled.

16 BY MR. BANES:

17 Q. Okay. So Ms. Skorupinski was a manager. Where was  
18 she a manager, sir?

19 A. IAH, the Houston Airport.

10:08:22

20 Q. All right. Now, take a look at page -- there are  
21 some pages at the top, sir, the fax page numbers --

22 A. Right.

23 Q. -- in the upper right-hand corner.

24 A. Right.

10:08:32

25 Q. First take a look at page -- page 4.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Who is Harold Murillo?

2 **A.** He is a manager as well.

3 **Q.** Where was he a manager?

4 **A.** At the time -- these managers, she moved them around.

10:08:47 5 This -- at this time where she is talking to him, he was  
6 at Houston Hobby -- no, Houston on the Beltway, it looks  
7 like.

8 **Q.** All right. So by her -- by "she," you mean  
9 Ms. Radel?

10:09:04 10 **A.** That's correct.

11 **Q.** And then turn to the next page, page 5.

12 Ms. Skorupinski, who is -- was she a  
13 manager, too?

14 **A.** Yes.

10:09:14 15 **Q.** And she was a manager where?

16 **A.** Page 5 is to Harold. And -- but -- they -- they were  
17 all managers of the Houston market. So they would either  
18 work at the airport or they would work at the Beltway.

19 **Q.** All right. And then turning to page 9, is

10:09:34 20 Mr. Straitwell on that one down at the bottom?

21 **A.** Yes.

22 **Q.** All right. So, these were all managers in the  
23 Houston -- or in the Houston market?

24 **A.** Yes.

10:09:41 25 **Q.** These were also the people that tracked hours?

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Yes.

2 **Q.** Now, turning back to Exhibit 16, Mr. Tweed, these  
3 issues about -- these issues about where -- who was  
4 tracking hours and who came up with the -- the various  
10:10:20 5 approaches to pay for the employees, is any of that  
6 discussed in Exhibit 16?

7 **A.** No.

8 **Q.** Did anyone orally discuss those issues with you --

9 **A.** No.

10:10:31 10 **Q.** -- prior to the execution of Exhibit 16, from Fisher  
11 & Phillips?

12 **A.** No.

13 MR. BANES: Your Honor, I would like to move  
14 for admission of Exhibit 10.

10:10:53 15 MR. SCHEXNAYDER: No objection.

16 THE COURT: Plaintiff's 10 is admitted without  
17 objection.

18 THE WITNESS: I didn't get a chance to answer  
19 the one question. Can I answer it? You asked me --

10:11:09 20 BY MR. BANES:

21 **Q.** What question is that, sir?

22 **A.** The question with -- relative to where does it show  
23 the 40 percent.

24 **Q.** Yes, sir.

10:11:14 25 **A.** And it's clearly on page 2. If you -- if you look

EDWARD J. TWEED - DIRECT BY MR. BANES

1 at -- if you look at the invoice, the invoice that she  
2 paid -- paid the employees was \$9,065.70 with a credit.  
3 But we paid her \$14,434.

10:11:39

4 Q. Okay. So for the amount -- does Exhibit 9 contain  
5 the amounts actually paid?

6 A. This is what the -- this is what the employees were  
7 paid.

8 Q. Right.

9 A. On top is what we paid her.

10:11:48

10 Q. Okay. Oh, okay. I see it. All right.

11 So you're talking about the amount block?

12 A. I'm talking about the \$14,434 is the 40 -- is her  
13 markup between the \$9,000.

14 Q. So that shows the 40 percent markup?

10:12:04

15 A. Right.

16 Q. All right. Now, in terms of actual sums paid --

17 A. Something like that.

18 Q. -- take a look at Exhibit 9 for a moment, sir.

19 A. Okay. Wait a minute, that didn't work. Okay.

10:12:13

20 Exhibit 9?

21 Q. Yes, sir.

22 A. Okay.

23 Q. Do you recognize this document, sir?

24 A. These are -- these are checks written to Veritas.

10:12:36

25 Q. All right. Now, so -- okay. During the relevant

EDWARD J. TWEED - DIRECT BY MR. BANES

1 time period?

2 **A.** Yes.

3 **Q.** All right.

4 MR. BANES: Now, move for admission of Exhibit  
10:12:45 5 9, Your Honor.

6 MR. SCHEXNAYDER: No objection.

7 THE COURT: Plaintiff's 9 is admitted without  
8 objection.

9 BY MR. BANES:

10:12:52 10 **Q.** Okay. Now, getting back to Exhibit 4, Mr. Tweed, for  
11 that 40 percent, what did you think you were paying  
12 Veritas for?

13 **A.** Well, I knew what I was clearly paying Veritas for,  
14 to hold me -- hold me not liable for any lawsuits, legal  
10:13:21 15 fees, misrepresentations that she made, any -- any  
16 mistakes she made that would cause me financial concern.

17 **Q.** Taking a look at Exhibit 16, are any of those issues  
18 discussed in that document?

19 **A.** No.

10:13:49 20 **Q.** Mr. Tweed, do you know -- did you know anything about  
21 ADP in terms of its contributions to these cases prior to  
22 discovery -- prior to our receiving discovery?

23 **A.** I didn't know anything about ADP until you brought it  
24 to my attention.

10:14:24 25 **Q.** That was just a few months ago?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** It was about two months ago.

2 **Q.** So was it September?

3 **A.** Well, it was -- trying to think. It was -- would  
4 it -- let's see. Yeah, I would say September.

10:14:47 5 **Q.** Let's strike that. It's not a memory test.

6 Anytime prior -- you know, you didn't know  
7 anything about ADP and its potential liability prior to  
8 the conflict?

9 **A.** I had never heard anything with regards to ADP. I  
10:15:03 10 didn't even know we -- all I knew was that ADP issued  
11 checks for Marcia Radel.

12 **Q.** All right. Now, did you know that -- did you know at  
13 the time of the conflict waiver that it was Ms. Radel's  
14 position that ADP had given her the advice on the day  
10:15:18 15 rate?

16 MR. SCHEXNAYDER: Objection; assumes facts not  
17 in evidence.

18 THE COURT: Sustained.

19 BY MR. BANES:

10:15:27 20 **Q.** Well, let's go through a few things, sir.

21 **A.** Okay.

22 **Q.** Take a look at Exhibit 42.

23 **A.** Okay.

24 **Q.** All right. I'll represent to you that this is the  
10:15:49 25 referral from ADP of Ms. Radel to Mr. Ropollo -- to Fisher

EDWARD J. TWEED - DIRECT BY MR. BANES

1 & Phillips.

2 Did you know that this referral occurred?

3 MR. SCHEXNAYDER: Object as assuming facts not  
4 in evidence. Counsel is --

10:16:02 5 THE COURT: What was the exhibit that you're  
6 referring to, Counselor?

7 MR. BANES: Exhibit 42, sir.

8 THE COURT: As Exhibit 42 is not currently in  
9 evidence, the objection is sustained.

10:16:37 10 BY MR. BANES:

11 Q. All right. Mr. Tweed, take a look at Exhibit 42 for  
12 a moment.

13 A. Okay.

14 Q. Do you see that this is an e-mail from Ms. Radel to  
10:16:50 15 Mr. --

16 A. Mine looks like --

17 MR. SCHEXNAYDER: I am going to object, Your  
18 Honor. This is hearsay and lack of predicate.

19 THE COURT: Well, first of all, I think it's a  
10:17:04 20 misdescription of the e-mail. This is from a Mr. Ruble to,  
21 I assume, Ms. Radel.

22 MR. BANES: Well, the e-mail starts out with  
23 Ms. Radel to Mr. Rebel.

24 THE COURT: Well, that was not what you said.  
10:17:21 25 To the extent you are going to point the witness's

EDWARD J. TWEED - DIRECT BY MR. BANES

1 attention to that particular portion of the e-mails, the  
2 full e-mail, then the one I am looking up at the top is the  
3 reverse of that.

4 MR. BANES: Okay, Your Honor.

10:17:33

5 BY MR. BANES:

6 Q. Well, take a look at the February 4th part of the  
7 e-mail, Mr. Tweed.

10:17:46

8 Do you see where it says, Thomas, I am a  
9 current client of ADP Total Source with a wage and hour  
10 summons from the U.S. District Court in Texas. They  
11 recommended that I contact you."

12 Do you see that part?

13 A. Yes, I do, sir.

14 Q. Did you know that this referral came from ADP?

10:17:55

15 A. Absolutely not.

16 Q. Now, do you see that there is -- that Mr. --

17 MR. BANES: Is there any objection if I  
18 represent that Mr. Rebel is a partner at Fisher &  
19 Phillips?

10:18:09

20 MR. SCHEXNAYDER: My objection, Your Honor, is  
21 this witness testifying about this e-mail when there is no  
22 predicate that he has ever seen it before or that he had  
23 anything to do with it?

10:18:20

24 THE COURT: Well, the questions that have been  
25 asked have been asked and answered.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 The question to you now, is there any  
2 objection to Mr. Rebel being referred to as a partner of --  
3 of Fisher?

10:18:34

4 MR. SCHEXNAYDER: No objection to that, Your  
5 Honor.

6 THE COURT: Very well.

7 BY MR. BANES:

8 Q. So you notice that Mr. Rapollo's copied on this  
9 e-mail?

10:18:44

10 A. Yes.

11 Q. All right. Now -- so did you know that this -- that  
12 this referral came from ADP -- or that Ms. -- the referral  
13 of Ms. Radel came from ADP to begin with?

10:18:57

14 MR. SCHEXNAYDER: Object again, Your Honor. I  
15 think he is mischaracterizing -- when he says "referral," I  
16 don't even know what he is talking about. He is putting  
17 words in the witness's mouth.

18 THE COURT: Sustained as to the counsel  
19 testifying.

10:19:07

20 Ask questions.

21 MR. BANES: Okay, Your Honor.

22 BY MR. BANES:

23 Q. All right. What is the subject line of the e-mail,  
24 Mr. Tweed?

10:19:16

25 A. The subject line says, "Referral from ADP Total

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Source."

2 **Q.** And what does Ms. Radel say in the second sentence of  
3 the e-mail on February 4th?

4 THE COURT: Just a moment.

10:19:32 5 MR. SCHEXNAYDER: Your Honor, he is getting  
6 around the hearsay objection by having the witness read  
7 from the document.

8 THE COURT: Do you have a hearsay objection?

9 MR. SCHEXNAYDER: I do.

10:19:38 10 THE COURT: The hearsay objection is sustained.

11 Counsel, this document is not in evidence,  
12 and to the extent that you have specific questions as to  
13 this witness's personal knowledge, ask those questions.

14 MR. BANES: Okay, Your Honor.

10:19:52 15 BY MR. BANES:

16 **Q.** Did you know of AD -- well, all right. I'll just --  
17 did you know anything about ADP and its involvement prior  
18 to the conflict waiver?

19 **A.** No.

10:20:49 20 MR. BANES: Your Honor, I would like to offer  
21 Exhibit 42.

22 MR. SCHEXNAYDER: Objection; hearsay.

23 THE COURT: Sustained.

24 MR. BANES: Your Honor, can I put on the record  
10:21:11 25 my offer of proof for that?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: Yes, sir.

2 MR. BANES: This is a business record from  
3 Fisher & Phillips that was produced to us. Marcia Radel  
4 was in this case as a defendant -- as a co-defendant. And  
10:21:24 5 this -- you know, this satisfies both the admission -- you  
6 know, admission of a party opponent and it satisfies the  
7 element of -- of business -- it's a -- it fits the business  
8 records exception.

9 THE COURT: Second, in regards to your  
10:21:42 10 response --

11 MR. BANES: Hearsay clause.

12 THE COURT: -- this has not been proven up as a  
13 business record before me. I haven't heard any testimony  
14 along those lines other than what you have just stated now.

10:21:52 15 Secondly, as to admission by a party  
16 opponent, I hadn't heard any details which would suggest  
17 that it's the admissions of a party opponent.

18 So the objection being sustained is  
19 correct.

10:22:06 20 Next question. Your next question.

21 BY MR. BANES:

22 Q. Okay. Mr. Tweed, can you turn to Exhibit 46, please?

23 Sir, can you identify what this document  
24 is?

10:23:23 25 A. This document is from Stephen Ropollo to someone

EDWARD J. TWEED - DIRECT BY MR. BANES

1 named Michelle Bennett. This is a reference to Veritas.

2 Q. All right. Now, the attachment says "Summons,  
3 Mason." Was Mason one of the cases that was at issue  
4 here?

10:23:47

5 A. It was Mason, Ozen, Emerson, and Bellard, from what I  
6 remember, and then Walker.

7 Q. All right. So, was Mason one of the first cases --  
8 was that -- Mason and Ozen, were those the first cases  
9 filed?

10:24:01

10 A. I believe so, yes.

11 Q. Alleging the day rate issue?

12 A. Yes.

13 Q. All right. Now, it says on this document, "The new  
14 client here is E & L Transfer, L.L.C. We will also be  
15 representing Edward Tweed, the owner of E & L. Need to  
16 include him in the conflicts."

10:24:14

17 MR. SCHEXNAYDER: I object to any testimony  
18 about this, hearsay.

19 MR. BANES: Your Honor, this is an admission by  
20 a party opponent. Mr. Ropollo is the managing partner  
21 of -- of Fisher & Phillips.

10:24:24

22 THE COURT: That hadn't been established yet,  
23 Counsel. You -- you tell me this by way of responding to  
24 the objection, but none of that has been established  
25 through the witness on the stand.

10:24:42

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: Okay, Your Honor. I'll -- let me  
2 fix that right quick.

3 BY MR. BANES:

4 Q. Mr. Tweed, who is Mr. Ropollo?

10:24:50 5 A. To my understanding, he's the managing partner of  
6 Fisher & Phillips.

7 Q. All right. And who was Ms. Wynne?

8 A. Ms. Wynne is the attorney who solicited me.

9 Q. Now, earlier you testified that you believe that  
10:25:07 10 Fisher & Phillips was representing your interest in all of  
11 these other day rate cases prior to Walker, including  
12 Mason and Ozen.

13 A. Yes.

14 Q. All right. Now, is the --

10:25:25 15 MR. BANES: So, we would renew -- we would  
16 renew the question, Your Honor. It says, "The new client  
17 here is E & L Transfer" --

18 THE COURT: And direct my attention. You are  
19 in Exhibit 43. Where are you directing --

10:25:38 20 MR. BANES: No, Your Honor. Exhibit 46.

21 THE COURT: I'm sorry. In Exhibit 46, where  
22 are you directing my attention to specifically?

23 MR. BANES: It says the new client -- it is  
24 from Mr. Ropollo, who is the managing partner at Fisher &  
10:25:49 25 Phillips, and it says, "The new client here is E & L

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Transfer, L.L.C. We will also be" --

2 THE COURT: What page?

3 MR. BANES: Page FP745.

4 THE COURT: 745. Very well.

10:26:00

5 MR. BANES: All right.

6 THE COURT: Very well. What is your question?

7 BY MR. BANES:

8 Q. All right. It says here, "The new client here is

9 E & L Transfer, L.L.C. We will also be representing

10:26:08

10 Edward J. Tweed, the owner of E & L. Need to include him  
11 in the conflicts."

12 THE COURT: Okay.

13 BY MR. BANES:

14 Q. Did you understand that your interests were being

10:26:17

15 represented as well?

16 THE COURT: Just a moment.

17 Your objection?

18 MR. SCHEXNAYDER: Objection; hearsay.

19 THE COURT: In regards to this witness's

10:26:25

20 knowledge of this e-mail, it does not indicate on its face  
21 that he received it or he was aware of it. So, how is it  
22 that he is responding to something that on its face shows  
23 that he was not aware of?

24 MR. BANES: Your Honor, this is a written --

10:26:42

25 this is a written recitation by Fisher & Phillips that they

EDWARD J. TWEED - DIRECT BY MR. BANES

1 are representing Mr. Tweed.

2 THE COURT: I agree.

3 MR. BANES: So --

4 THE COURT: My question to you, on the face of

10:26:52

5 it, it does not even indicate that he is aware that this  
6 e-mail existed. Doesn't show him as a recipient or sender  
7 of the e-mail.

8 MR. BANES: Right, Your Honor.

9 THE COURT: Okay.

10:27:02

10 MR. BANES: I am not asking him if he did that.

11 THE COURT: Well, ask him that question without  
12 referencing the e-mail that he is unaware of.

13 MR. BANES: Well, it is important -- Your  
14 Honor, part of this case -- the importance of this is the  
15 failure to disclose and then the reversal of how they  
16 represented themselves to Mr. Tweed later versus earlier.

10:27:13

17 So earlier, Mr. Tweed was under the  
18 impression that they were representing his interests as  
19 well as he has already testified. And then, you know,  
20 they -- they take a contrary position later. But this is  
21 an admission at that time that they are representing him.

10:27:30

22 THE COURT: And my question to you, how is he  
23 aware of this admission in an e-mail that from its face he  
24 has no knowledge of?

10:27:45

25 MR. BANES: Well, he doesn't -- that's --

EDWARD J. TWEED - DIRECT BY MR. BANES

1 that's the point, is that he -- they didn't disclose this  
2 to him, you know, but that doesn't make the document  
3 inadmissible. It makes the document admissible because  
4 it's an admission by a party opponent that they did  
10:28:01 5 represent him and put them in their conflicts database.

6 THE COURT: The way that you pose your question  
7 presupposes that he has knowledge of the contents of the  
8 e-mail that you haven't demonstrated to this Court he had  
9 any knowledge of. Your question is based upon the e-mail.

10:28:18 10 MR. BANES: No, Your Honor. That is not the  
11 question.

12 THE COURT: That was exactly the question. You  
13 read a portion of the e-mail to him and then asked him a  
14 question.

10:28:26 15 MR. BANES: Well, I did, but --

16 THE COURT: The objection has been sustained.  
17 Ask your next question --

18 MR. BANES: All right.

19 THE COURT: -- Counselor.

10:28:33 20 BY MR. BANES:

21 Q. Let me ask it this way: Mr. Tweed, they're saying in  
22 here that they need to include you in their conflicts  
23 database as a client.

24 MR. SCHEXNAYDER: Same objection.

10:28:44 25 BY MR. BANES:

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. Was that your -- absent this e-mail was that your  
2 understanding as well at the time?

3 THE COURT: Just a moment.

4 Your objection.

10:28:52 5 MR. SCHEXNAYDER: The first part of that  
6 question does refer back to this document.

7 THE COURT: Sustained as to the first part of  
8 your question.

9 MR. BANES: All right.

10:28:59 10 BY MR. BANES:

11 Q. What -- okay. Was it your understanding at the time  
12 that you were being represented by Fisher & Phillips, too?

13 A. It was always my belief that I was being represented.

14 Q. All right. On all of the cases, Ozen --

10:29:13 15 A. Yes.

16 Q. Mason, Bellard, and Emerson?

17 A. Yes.

18 Q. All right.

10:29:23 19 MR. BANES: Your Honor, I would like to move 46  
20 for admission.

21 MR. SCHEXNAYDER: Objection; hearsay, lack of  
22 predicate.

23 THE COURT: How do you get over the hearsay  
24 objection on Exhibit 46 at this time?

10:29:34 25 MR. BANES: Well, Your Honor, this is an

EDWARD J. TWEED - DIRECT BY MR. BANES

1 admission by a party opponent.

2 THE COURT: What's the admission?

3 MR. BANES: The admission is that they are  
4 representing -- that they are including Mr. -- Mr. Tweed in  
10:29:46 5 their conflicts database as a client and E & L Transfer as  
6 well, and that they are representing them and that -- you  
7 know, the case -- you know, this case is about --

8 THE COURT: I got that. I'm just -- so, the --  
9 the admission of the party opponent is the second paragraph  
10:30:05 10 that you're referring to?

11 MR. BANES: Yes, Your Honor.

12 THE COURT: Counselor.

13 MR. SCHEXNAYDER: We haven't denied that fact,  
14 Your Honor, so it is not an admission of anything.

10:30:17 15 THE COURT: The objection is overruled. 46 is  
16 admitted.

17 Counsel, is this a good time to take a  
18 break?

19 MR. BANES: Yes, Your Honor.

10:30:26 20 THE COURT: We will resume at 10:45.

21 THE LAW CLERK: All rise.

22 (Proceedings recessed from 10:30 a.m. to 10:44 a.m.)

23 THE LAW CLERK: All rise.

24 THE COURT: Mr. Tweed. Thank you. Please be  
10:44:51 25 seated. Pull your mic down a little bit. Thank you.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Counsel.

2 MR. BANES: Thank you, Your Honor.

3 BY MR. BANES:

4 Q. Mr. Tweed, can you please turn to Exhibit 48?

10:45:17 5 THE COURT: And, Counsel, pull your mic a  
6 little bit closer to you. Thank you.

7 MR. BANES: All right.

8 BY MR. BANES:

9 Q. Sir, can you identify this document for the record?

10:45:37 10 A. It's attorney/client communication, privileged and  
11 confidential, from Phillips to Marcia Radel.

12 Q. Who signed this document?

13 A. I -- I don't recall ever signing this document, no.

14 Q. But who did -- who did sign it? Who is it signed --

10:46:04 15 A. Well, it was sent to Marcia Radel. So...

16 Q. On page FPA20, who did sign it?

17 A. Page 20? Stephen Ropollo.

18 Q. So, on the first page of it, it says, "This will  
19 confirm that you wish to retain Fisher & Phillips to

10:46:26 20 represent Veritas Personnel Services, Incorporated, E & L  
21 Transfer, L.L.C., and Edward J. Tweed in connection with  
22 the referenced cases which we understand involve the same  
23 allegations with the same set of facts but different  
24 Plaintiffs and different Defendants."

10:46:37 25 Was that your understanding of these

EDWARD J. TWEED - DIRECT BY MR. BANES

1 cases?

2 **A.** It was my understanding that they were all the same  
3 type of cases, yes.

10:46:48

4 **Q.** Did you also believe that Fisher & Phillips was  
5 representing your interests as well in these cases?

6 **A.** Yes.

7 MR. BANES: Move to admit Exhibit 48, Your  
8 Honor.

9 MR. SCHEXNAYDER: No objection.

10:47:06

10 THE COURT: Defendant's -- I'm sorry.  
11 Plaintiff's Exhibit --

12 MR. BANES: Plaintiff's exhibit. I'm sorry.

13 THE COURT: -- 48 is admitted without  
14 objection.

10:47:57

15 BY MR. BANES:

16 **Q.** Turn to Exhibit 49, Mr. Tweed. Mr. Tweed, I'm just  
17 going to ask you, did you ever -- have you ever seen this  
18 e-mail before?

19 **A.** No.

10:48:30

20 **Q.** You weren't copied on it at the time?

21 **A.** No. I am not copied on this, no.

22 **Q.** All right.

23 MR. BANES: Move to admit Exhibit 49.

24 MR. SCHEXNAYDER: Object; hearsay.

10:48:51

25 THE COURT: Sustained. The witness just said

EDWARD J. TWEED - DIRECT BY MR. BANES

1 he wasn't familiar with it.

2 MR. BANES: I understand that, Your Honor. We  
3 will fix that later.

4 BY MR. BANES:

10:49:29

5 Q. Turn to Exhibit 15, Mr. Tweed. Can you identify what  
6 this series of documents is, sir?

7 A. It looks like it's a document from ADP Total Source.  
8 Yes.

9 Q. Exhibit 15?

10:50:12

10 A. Exhibit 15 is a document -- it's ADP Total Source and  
11 its clients wholly subscribe to the principles of equal  
12 employment opportunity.

13 Q. I think that is one of the documents in here.

14 But let me just ask it this way: Is this  
15 Mr. Walker's personnel file?

10:50:25

16 A. Yes.

17 Q. All right. Now, who maintained these documents?

18 A. Veritas.

19 Q. Did you maintain them at E & L?

10:50:34

20 A. No.

21 MR. BANES: Move to admit Exhibit 15, sir.

22 MR. SCHEXNAYDER: No objection.

23 THE COURT: Plaintiff's 15 is admitted without  
24 objection.

10:50:58

25 BY MR. BANES:

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. Take a look at Exhibit 11, Mr. Tweed.

2 Can you identify this document for the  
3 record?

10:51:24

4 A. It appears to me that it's a -- it's the lawsuit that  
5 was filed from -- by Emerson against Veritas.

6 Q. So this was the Emerson case?

7 A. Yes.

8 Q. When was this filed? It's on the last page, sir.

9 A. The 18th day of April, 2014.

10:51:54

10 Q. Now, you weren't sued in this case, were you?

11 A. My name doesn't appear here, no.

12 Q. Did you believe that your interest -- that Fisher &  
13 Phillips was representing your interests as well in this  
14 lawsuit?

10:52:08

15 MR. SCHEXNAYDER: Objection.

16 A. Yes.

17 THE COURT: Just a moment.

18 MR. SCHEXNAYDER: Mischaracterizes the facts,  
19 the testimony.

10:52:17

20 THE COURT: Counsel, I am not following your  
21 objection.

22 MR. SCHEXNAYDER: Well, he just said he wasn't  
23 a party. And then he just asked, Was the firm representing  
24 his interests in it? So I think that is misleading.

10:52:26

25 THE COURT: Rephrase your question, Counselor.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: All right.

2 BY MR. BANES:

3 Q. Mr. Tweed, did you have potential liability in this  
4 lawsuit, too?

10:52:35 5 MR. SCHEXNAYDER: Objection; calls for a legal  
6 conclusion.

7 BY MR. BANES:

8 Q. Well, let me --

9 THE COURT: Sustained.

10:52:39 10 BY MR. BANES:

11 Q. -- ask it this way: Did you believe -- you testified  
12 already that you believed that Fisher & Phillips was  
13 representing your interests in all these cases.

14 A. Yes.

10:52:47 15 Q. Did you think that this was one of -- is this one of  
16 the cases where you thought Fisher & Phillips was  
17 representing your interests?

18 A. Yes.

19 Q. Why do you think that? Why did you think that?

10:53:03 20 A. Because I had a contract with Marcia Radel from  
21 Veritas to indemnify me from any legal action.

22 Q. And did she tell you that she was doing that?

23 A. Yes.

24 Q. Did she tell you that she had hired Fisher & Phillips  
10:53:16 25 to do that?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Yes.

2 **Q.** Did she tell you that they were representing your  
3 interests as well?

4 **A.** Yes.

10:53:29 5 **Q.** Take a look at Exhibit 13.

6 Can you identify this document for the  
7 record, sir?

8 **A.** This appears to be a lawsuit filed by Dwight Bellard  
9 against Veritas Personnel Services.

10:54:03 10 **Q.** This was the same type of lawsuit as Mason and Ozen  
11 and Emerson?

12 **A.** Yes.

13 **Q.** Did you believe that Fisher & Phillips was  
14 representing your interests in this lawsuit as well?

10:54:18 15 **A.** Yes.

16 **Q.** Why did you think that?

17 **A.** Because Marcia Radel told me that they were  
18 representing Veritas and E & L in all of these similar  
19 suits.

10:54:51 20 **Q.** Taking a look -- now, did Ms. Radel indemnify you and  
21 E & L on all these other suits prior to Walker?

22 **A.** Yes.

23 MR. SCHEXNAYDER: I object.

24 THE COURT: Just a moment.

10:55:01 25 MR. SCHEXNAYDER: Calls for a legal conclusion.

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1 THE COURT: Overruled.

2 BY MR. BANES:

3 Q. All right. Let's clear that up.

4 How did she indemnify on those prior  
5 cases?

10:55:14

6 A. I was never called to court. I never paid any fees.  
7 I never paid any settlement. She just took care of all  
8 that.

9 Q. So you understood that she was taking care of all  
10 that on all those cases?

10:55:24

11 A. Yes.

12 Q. Did you expect her to do the same on Walker?

13 A. Yes.

14 Q. Now, taking a look back at Exhibit 16, the conflict  
15 waiver, all this history of indemnity that had happened on  
16 all of these other cases, is any of that discussed in this  
17 document?

10:55:37

18 A. No.

19 Q. Did they -- are any of the advantages and  
20 disadvantages of that prior indemnify discussed in here?

10:55:53

21 A. No.

22 Q. Is there any attempt to justify why it wouldn't --  
23 why it shouldn't happen in Walker?

24 A. No.

10:56:07

25 Q. Did Fisher & Phillips ever try to explain to you why

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Walker shouldn't be indemnified as the prior ones?

2 **A.** Absolutely not.

3 MR. BANES: Move to admit those documents I  
4 just went through, Your Honor. I think it was 11 --

10:56:35

5 THE COURT: Well, let's take them one at a  
6 time, Counsel.

7 MR. BANES: Let's start with an offer of  
8 Exhibit 11, Your Honor.

9 MR. SCHEXNAYDER: No objection.

10:56:42

10 THE COURT: Plaintiff's 11 is admitted without  
11 objection.

12 MR. BANES: Exhibit 12.

13 MR. SCHEXNAYDER: I don't think there was any  
14 testimony about 12.

10:56:50

15 MR. BANES: Oh, wait.

16 Well, we talked about the answer. Is  
17 there any objection to 12 and 13?

18 MR. SCHEXNAYDER: No, no objection.

19 THE COURT: To either?

10:57:04

20 MR. SCHEXNAYDER: Either.

21 THE COURT: Plaintiff's 12 and 13 are admitted  
22 without objection.

23 MR. BANES: And then 14, I would offer 14.

24 MR. SCHEXNAYDER: No objection.

10:57:24

25 THE COURT: Plaintiff's 14 is admitted without

EDWARD J. TWEED - DIRECT BY MR. BANES

1 objection.

2 BY MR. BANES:

3 Q. All right. Turn to -- Mr. Tweed, earlier we were  
4 talking about the -- what was intended with the agreement  
10:57:54 5 and what it said between you and Veritas.

6 Do you remember that testimony?

7 A. Right.

8 Q. I am going to go through a few documents to actually  
9 see how it operated in practice. So if you could turn to  
10:58:06 10 Exhibit 23.

11 Can you identify this document for the  
12 record?

13 A. This is a -- a recruitment document that Marcia was  
14 working on with her manager in Lubbock, Texas.

10:58:31 15 Q. All right. Now, she mentions Nora there. Is that  
16 Nora Gonzalez?

17 A. That would be Nora Gonzalez.

18 Q. She was the HR director for Veritas?

19 A. Yes, she was.

10:58:42 20 Q. All right. Now -- so was one -- when we were looking  
21 at the agreement, we noticed one of the areas was  
22 recruitment that Veritas was responsible for with respect  
23 to the employees. Is this document consistent with that?

24 A. Yes.

10:58:54 25 MR. BANES: Move to admitted Exhibit 23, Your

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Honor.

2 MR. SCHEXNAYDER: No objection.

3 THE COURT: Plaintiff's 123 is admitted without  
4 objection.

10:59:12

5 BY MR. BANES:

6 Q. Turn to Exhibit 24. Earlier, Mr. Tweed, you said  
7 that you -- you testified that you had no background in  
8 HR, human resources, and that you relied on Veritas for  
9 that. What is -- what is the document in Exhibit 24?

10:59:27

10 A. It's a -- it's a document Marcia sent to me saying  
11 that it would be okay for us to -- to give the employees  
12 some type of -- give our employees some type of incentives  
13 if they helped in reducing our expense with our insurance.

14 Q. Is Ms. Radel advising you on pay for the employees?

11:00:01

15 A. She is giving me -- this is Marcia giving me  
16 permission to address her employees, basically.

17 Q. Is this one of her roles to -- to advise you on how  
18 to compensate specially or generally the employees?

19 A. Yes.

11:00:17

20 MR. BANES: Move to admit Exhibit 24, Your  
21 Honor.

22 MR. SCHEXNAYDER: No objection.

23 THE COURT: 24 is admitted.

24 And, Counsel --

11:00:25

25 MR. BANES: Yes, Your Honor.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: -- respectfully, for both of you,  
2 when you address the Court, please stand. When you -- when  
3 you address the Court and you're not standing, it's as if  
4 you're sitting there with a baseball cap on. I take a  
5 negative impression from it. I know it is very old  
6 fashioned, but it is part of my procedures.

11:00:36

7 MR. BANES: I don't have any problem with that,  
8 Your Honor. I'm sorry.

9 THE COURT: Very well.

11:01:31

10 BY MR. BANES:

11 Q. Turn to Exhibit 29, Mr. Tweed.

12 Can you identify this document for the  
13 record, sir?

14 A. This is a document to her managers.

11:01:58

15 Q. "To her managers" meaning Ms. Radel's?

16 A. This is -- this is -- this is from Marcia Radel, the  
17 president of HireGround, she shows herself here as, which  
18 is a company she owns in California, to her human  
19 resources and the managers in Texas that she was trying --  
20 she had tried for a couple of weeks to test the -- the  
21 difficulty the managers were having communicating with her  
22 because of the difference in the hours of the day, the  
23 time zones.

11:02:28

24 Q. Well, now -- so Marcia Radel said -- can you read the  
25 e-mail from -- the first paragraph of the e-mail from

11:02:50

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Marcia Radel on May 15th, 2015 there halfway down?

2 **A.** Halfway down. "Starting on Monday, May 18th, Veritas  
3 will have a representative at our office at 8:00 a.m. in  
4 order to assist you with any HR issues you are having."

11:03:11

5 **Q.** So these are -- this is Ms. Radel's communication to  
6 the Veritas managers for the employees?

7 **A.** Yes.

8 **Q.** Was this her role in this whole company?

9 **A.** Absolutely.

11:03:25

10 **Q.** Was that your understanding underneath the agreement  
11 between Veritas and E & L?

12 **A.** Yes.

13 **Q.** All right. Now, turn --

14 MR. BANES: Your Honor, move to admit Exhibit  
15 29 for the record.

11:03:49

16 THE COURT: Any objection?

17 MR. SCHEXNAYDER: No objection, Your Honor.

18 THE COURT: Plaintiff's 29 is admitted without  
19 objection.

11:03:57

20 BY MR. BANES:

21 **Q.** Turn to Exhibit 30, Mr. Tweed, please.

22 Can you identify this document for the  
23 record, Mr. Tweed?

24 **A.** This appears to be a document from Marcia to her  
25 manager, Clint Straitwell, and it looks to me like -- it

11:04:33

EDWARD J. TWEED - DIRECT BY MR. BANES

1 looks to me like she was discussing some -- trying to get  
2 Clint to be clear on how he's tracking the hours for the  
3 drivers in Beaumont.

11:05:07

4 Q. And was -- Mr. Straitwell, was he an employee of  
5 Ms. Radel?

6 A. Yes.

7 Q. And she was telling him how to track hours for the  
8 employees, in this e-mail?

9 A. Yes.

11:05:15

10 Q. Was that one of her jobs?

11 A. Yes.

12 MR. BANES: Move to admit Exhibit 30, Your  
13 Honor.

14 MR. SCHEXNAYDER: No objection.

11:05:25

15 THE COURT: Plaintiff's 30 is admitted without  
16 objection.

17 Counsel --

18 MR. BANES: I'm sorry, Your Honor.

11:05:31

19 THE COURT: -- I have another issue, too, and  
20 perhaps you're going to be able to enlighten me. I'm  
21 trying to follow the admission of certain exhibits.

22 Obviously, this is your case in chief, and you're making  
23 the record that you deem necessary. But just trying to  
24 track the relevance of some of these objections to the

11:05:48

25 causes of action. I thought I was in here on whether or

EDWARD J. TWEED - DIRECT BY MR. BANES

1 not a law firm had breached its fiduciary duties to one of  
2 its clients and ultimately -- and perhaps alternately  
3 whether or not there was a breach of contract.

11:06:08

4 Looking at exhibit -- well, let's start  
5 with 15, which is a personnel file of an underlying  
6 employee; Exhibit 14, which is the order of dismissal in a  
7 lawsuit; and now in what was just admitted, Exhibit 30, a  
8 short e-mail regarding tracking the hours of a driver.

11:06:41

9 I am not -- I am unclear, and perhaps as  
10 you can connect the dots in this, a picture will emerge to  
11 the Court which points out the relevance of this in filling  
12 -- or answering the question as to whether or not this  
13 defendant law firm breached its duty to its client.

11:07:04

14 So you have four big volumes over here,  
15 and I am looking for enlightenment on those questions.

11:07:21

16 MR. BANES: Yes, Your Honor. We had to set a  
17 predicate because of the way the case is. We had to set a  
18 predicate about, you know, what Mr. Tweed understood the  
19 obligations were with Veritas before we could launch into  
20 the documents that lead right up to -- between -- with the  
21 law firm that lead up to the execution of the conflict  
22 waiver. Because you will see as you get -- as we get into  
23 them that what Fisher & Phillips' representations to  
24 Mr. Tweed were, and what they accepted as true without  
25 inquiry, was just not the truth.

11:07:40

EDWARD J. TWEED - DIRECT BY MR. BANES

1 So it's -- that's the important point of  
2 going through these things and actually understanding them.

3 THE COURT: Yes, sir. Thank you.

4 BY MR. BANES:

11:08:53

5 Q. Okay. Mr. Tweed, turn to Exhibit 54.

6 Okay. Mr. Tweed -- actually, skip that  
7 one, sir. Turn to Exhibit 55.

8 Can you identify Exhibit 55 for the  
9 record, sir?

11:10:04

10 A. It looks like a check for -- from Veritas to one of  
11 our employees, Crystal Ozen.

12 Q. You testified earlier that Ms. -- that Veritas  
13 handled the settlements and the attorneys' fees for the  
14 Ozen and Mason matter?

11:10:29

15 A. Yes.

16 Q. All right. Now, did you pay any portion of those?

17 A. No.

18 Q. So 55 is a check by Veritas.

19 56, can you identify what 56 is?

11:10:41

20 A. 56 appears to be a check for legal expenses for --  
21 Veritas paid to Ross Law Group.

22 Q. Well, there is a -- there is an e-mail -- there is a  
23 check before that, too.

24 A. We have got a check here for Crystal Ozen, and the  
25 next check on page 420 is to Ross Law Group.

11:11:05

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. Okay. So, turn to Tab 57, sir.

2 Can you identify that document for the  
3 record?

11:11:30

4 A. It appears to be a settlement agreement and general  
5 release from Crystal Ozen and Veritas Personnel.

6 Q. And Exhibit 58, can you identify that document?

7 A. It's a settlement agreement and release  
8 for Mr. Mason -- or Mrs. Mason. I don't know who -- Mason  
9 and Veritas.

11:12:01

10 Q. All right. Now, did you have to contribute anything  
11 to any of these lawsuits?

12 A. No.

13 MR. BANES: Move to admit Exhibits 54 -- well,  
14 offer Exhibit 54, Your Honor.

11:12:15

15 THE COURT: Any objection?

16 MR. SCHEXNAYDER: Yes. Hearsay.

17 MR. BANES: I didn't mean to offer 54. I'll  
18 withdraw that, Your Honor. 55 is what I meant to offer.

19 MR. SCHEXNAYDER: No objection.

11:12:41

20 THE COURT: Plaintiff's 55 is admitted without  
21 objection.

22 MR. BANES: Offer Exhibit 56, Your Honor.

23 MR. SCHEXNAYDER: No objection.

24 THE COURT: Plaintiff's Exhibit 56 is admitted  
25 without objection.

11:13:02

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: Offer Exhibit 57.

2 MR. SCHEXNAYDER: No objection.

3 THE COURT: Plaintiff's 57 is admitted without  
4 objection.

11:13:09 5 MR. BANES: Offer Exhibit 58, Your Honor.

6 MR. SCHEXNAYDER: No objection.

7 THE COURT: Plaintiff's 58 is admitted without  
8 objection.

9 BY MR. BANES:

11:13:56 10 Q. Turn to Exhibit 105, Mr. Tweed.

11 A. What book is that in?

12 Q. It's in Book 2.

13 Mr. Tweed, can you identify Exhibit 105  
14 for the record?

11:14:48 15 A. This appears to be an e-mail between Alia Wynne and  
16 Dave Molten, copy-copy Stephen Ropollo, attachments with  
17 regard to the settlement of -- settlement agreement and  
18 release of Bernard and Bell and Cruz.

19 Q. Bellard, Tennard, Cruz and Bell?

11:15:20 20 A. Yes.

21 Q. All right. Now, did you have to contribute anything  
22 to the legal fees or to the settlement in any of these  
23 cases?

24 A. No.

11:15:25 25 Q. All right. Now, take a look at Exhibit 106.

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Can you identify that for the record?

2 **A.** It's a settlement agreement and release for Bellard  
3 to Veritas.

4 **Q.** And take a look at Exhibit 107.

11:15:56

5 Can you identify that for the record, sir?

6 **A.** Settlement agreement for Edrin Bell.

7 **Q.** Now, take a look and identify Exhibit 108, sir.

8 **A.** This is a settlement for Cruz.

9 **Q.** And then take a look at Exhibit 109 and identify  
10 that.

11:16:26

11 **A.** This appears to be a settlement agreement for  
12 Tennard.

13 MR. BANES: All right. Now move to admit these  
14 documents, Your Honor. Let's start one at a time. Exhibit  
15 106 is offered.

11:16:43

16 THE COURT: Will you be offering 106 through  
17 109?

18 MR. BANES: Yes, Your Honor.

19 MR. SCHEXNAYDER: No objection.

11:16:51

20 THE COURT: Plaintiff's 106, 107, 108 and 109  
21 are admitted without objection.

22 MR. BANES: As well as 105.

23 MR. SCHEXNAYDER: No objection.

24 THE COURT: Plaintiff's 105 is admitted without  
25 objection.

11:17:12

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. Now, did you -- you testified you didn't have to  
3 contribute anything to any of these lawsuits?

4 A. No, sir.

11:17:18

5 Q. And did you understand that your interests were being  
6 represented in these lawsuits as well?

7 A. Yes.

8 Q. Were these lawsuits resolved?

9 A. Yes.

11:17:34

10 Q. Did Ms. Radel ever seek any contribution from you?

11 A. No.

12 Q. All right. Take a look at Exhibit 111.

13 Can you identify this document for the  
14 record, sir?

11:18:03

15 A. It's a settlement -- a copy of settlement agreements  
16 and releases for Bell, Cruz and Tennard.

17 Q. It says, "The settlement payments are due to the  
18 opposing counsel within nine days. Please send them  
19 directly to opposing counsel."

11:18:17

20 Are you copied on this?

21 A. No.

22 MR. BANES: I move to admit Exhibit 111, sir --  
23 Your Honor.

24 MR. SCHEXNAYDER: No objection.

11:18:30

25 THE COURT: Plaintiff's 111 is admitted without

EDWARD J. TWEED - DIRECT BY MR. BANES

1 objection.

2 BY MR. BANES:

3 Q. Turning back to -- let's turn back to Exhibit 16 for  
4 a moment, Mr. Tweed. It is in Volume 1.

11:19:18

5 A. Yeah.

6 Q. The fact that Ms. Radel and Veritas had indemnified  
7 you before on all those prior cases, prior to Walker, is  
8 that referenced anywhere in the conflict waiver?

9 A. No.

11:19:28

10 Q. Was that ever discussed with you, the implications of  
11 that?

12 A. No.

13 Q. Did they ever try to distinguish the Walker case with  
14 you, other than saying that only you were sued?

11:19:39

15 A. No.

16 Q. Mr. Tweed, can you please turn to Exhibit 141? It is  
17 in book -- it is in Book 3.

18 MR. SCHEXNAYDER: 140...

19 MR. BANES: 141.

11:21:21

20 A. Okay.

21 BY MR. BANES:

22 Q. Okay. Mr. Tweed, in Exhibit 141, can you, please,  
23 turn to page number 12082?

24 A. I thought you said 143.

11:21:32

25 Q. 141.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** 141? 141, page what?

2 **Q.** Page FP1 -- 012082.

3 **A.** Okay.

4 **Q.** All right. Now, at this point did you know about --

11:21:56

5 had anyone talked to you about the Walker suit, as of

6 August 31st of 2015?

7 **A.** No. It was in September.

8 **Q.** All right. Now, the subject line here says "Bellard

9 versus Veritas," but take a look at the last paragraph

11:22:15

10 that starts "Finally," on this page. Can you read that

11 out loud?

12 **A.** It says, "Finally you may want to notify Ed Tweed

13 that he should retain counsel" --

14 **MR. SCHEXNAYDER:** Excuse me, Your Honor. I

11:22:30

15 object on hearsay. He is testifying about a document that

16 hasn't been admitted.

17 **THE COURT:** Sustained.

18 **BY MR. BANES:**

19 **Q.** Mr. Tweed, take a look at -- take a look at

11:23:30

20 FP0012081. On September 1st there is an e-mail from

21 Ms. Wynne to Ms. Radel, and it's copy to Mr. Ropollo, and

22 it says in the second sentence, "Steve suggested that

23 Ed" --

24 **MR. SCHEXNAYDER:** Excuse me, Your Honor.

11:23:50

25 **THE COURT:** Just a moment.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. SCHEXNAYDER: Same objection.

2 THE COURT: Let me hear the completion of the  
3 question first.

4 BY MR. BANES:

11:23:55

5 Q. "Steve suggested that Ed might mistakenly believe  
6 that Veritas is going to handle this lawsuit because it  
7 handled the previous FLSA actions."

11:24:11

8 Mr. Tweed, did anyone raise to you  
9 anything about Veritas not covering the Walker lawsuit at  
10 this time?

11 A. No.

12 Q. Had you suggested to anybody or discussed with  
13 Ms. Radel the idea that Veritas might not cover this --  
14 the Walker lawsuit as it had the previous lawsuits?

11:24:35

15 A. No.

16 Q. Did you know that Ms. Wynne was -- or that Fisher &  
17 Phillips was discussing with Ms. Radel that this lawsuit  
18 might not be -- the Walker lawsuit might not be covered by  
19 her?

11:24:52

20 A. No.

21 Q. Turn to FP012078, Mr. Tweed. There is a September  
22 9th, 2015 e-mail there. Do you see that?

23 A. Yes.

24 Q. You are not copied on this either, are you?

11:25:25

25 A. No.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. All right. Now, it says, "Steve, just spoke with  
2 Marcia. She seems to be considering being involved in the  
3 E & L lawsuit. Basically she wants us to tell her if she  
4 should agree to cover the lawsuit like she did with the  
5 previous E & L ones."

11:25:40

6 Now, did Fisher & Phillips ever tell you  
7 prior to the conflict waiver that they were advising  
8 Ms. Radel on whether to cover the Walker lawsuit?

9 A. No.

11:25:55

10 Q. You heard Mr. Schexnayder during his opening say that  
11 it was your idea for the apportionment and not to -- you  
12 know, not -- for Veritas to not fully cover the lawsuit.

13 Did that cover -- did that ever come from  
14 you?

11:26:12

15 A. That's ridiculous.

16 Q. All right. Now, Ms. Wynne goes on and says, "She  
17 said she is not contractually obligated to do so. I told  
18 her I do not see a legal obligation to become involved at  
19 this point but that it is very likely that Veritas will be  
20 brought in regardless."

11:26:30

21 Did you know that Fisher & Phillips was  
22 advising Ms. Radel that they didn't see an obligation for  
23 her to get involved --

24 A. No.

11:26:38

25 Q. -- at all at this point?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. SCHEXNAYDER: Your Honor, I object to his  
2 testifying as to what this document says.

3 THE COURT: Sustained.

4 And, Counsel, this document is not in  
11:26:46 5 evidence, and to the extent that you are relying upon  
6 factual statements in it, you are getting around offering  
7 it and having it tested as to whether or not there is  
8 objection to it. You can ask this witness about his  
9 personal knowledge.

11:27:00 10 MR. BANES: Yes, Your Honor.

11 THE COURT: All right.

12 MR. BANES: All I am asking right now -- I  
13 mean, we can get -- we will get it in through another  
14 witness, but all I need to ask him right now is if he was  
11:27:08 15 aware of these things.

16 THE COURT: Well, just ask him that. By  
17 reading from the document, you're reading into the  
18 record --

19 MR. BANES: Oh.

11:27:14 20 THE COURT: -- a document that is not in  
21 evidence.

22 MR. BANES: Okay, Your Honor.

23 THE COURT: All right.

24 MR. BANES: All right.

11:27:18 25 BY MR. BANES:

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. All right. Mr. Tweed, I don't want to read it. So,  
2 go to -- go to the part where it says we talked about it.  
3 Do you see that in that first paragraph there at FP012078?

4 A. So, am I supposed to read it?

11:27:46

5 THE COURT: Just a moment.

6 THE WITNESS: I'm sorry.

7 MR. SCHEXNAYDER: I don't know what the  
8 question is. I guess I better wait.

9 THE WITNESS: Yeah. What is the question?

11:27:52

10 MR. BANES: I don't have a question, Your  
11 Honor.

12 A. Oh, yeah, I am at the part --

13 BY MR. BANES:

14 Q. All right. Just read that to yourself, sir.

11:27:58

15 A. Okay.

16 Q. All right. Now, did you -- in your view was Walker  
17 any different than Bellard?

18 A. No.

19 Q. All right. Now, did you think that violations that  
20 predated January 20 -- did you think that you only had  
21 obligations for those that predated 2015?

11:28:27

22 A. No.

23 Q. Did -- did anyone from Fisher & Phillips ever speak  
24 to you prior to the conflict waiver to learn your story  
25 about, you know, what actually happened in 2015?

11:28:43

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** And it was as if -- I mean, you have already  
3 testified about what was actually done. Did -- did you  
4 feel that you were responsible for 2015?

11:28:59

5 **A.** No.

6 **Q.** Why not?

7 **A.** Because I had an agreement with Marcia Radel, a  
8 contractual agreement, saying that she would indemnify me  
9 from all legal actions and costs and expenses incurred in  
10 any legal action.

11:29:14

11 **Q.** Did you think that any of -- those things that were  
12 being alleged, did you think that in the lawsuit, the  
13 Walker suit, did you think that you were responsible for  
14 those things?

11:29:24

15 **A.** Absolutely not.

16 **Q.** And why was that?

17 **A.** Because I did nothing ever different. There was  
18 nothing different. They were all about Marcia's -- what  
19 she explained to me as she received bad information when  
20 she set up the payroll. She never told me who, what,  
21 where, any of that, even who was -- who was the bad  
22 representation.

11:29:40

23 **Q.** Looking back at Exhibit 16, sir, with respect to --  
24 with respect to the advice that's being given in this  
25 document, 141, is any of this that Fisher & Phillips is

11:30:37

EDWARD J. TWEED - DIRECT BY MR. BANES

1 talking about with Ms. -- with Ms. Radel, is any of that  
2 covered in the conflict waiver?

3 MR. SCHEXNAYDER: Excuse me, Your Honor. He is  
4 now referring back to the same document and asking him to  
5 testify about it. Hearsay.

11:30:56

6 MR. BANES: Well, I am not asking about him to  
7 testify about this document. I'm just asking him to say --  
8 you know, in the opening statement, Your Honor,  
9 Mr. Schexnayder said that he could prove a conflict waiver  
10 both orally and with the written conflict waiver itself. I  
11 don't necessarily agree with that, but I want to cover both  
12 bases.

11:31:10

13 So with respect to what was disclosed to  
14 Mr. Tweed, these provide context of what Fisher & Phillips  
15 knew. I will establish later and admit it through  
16 Mr. Ropollo or someone else, but for right now I need to  
17 establish with Mr. Tweed whether he was ever told these  
18 things.

11:31:24

19 THE COURT: Why don't you just simply ask him  
20 what he was told without referencing the document?

11:31:35

21 MR. BANES: Well --

22 THE COURT: What he was told has nothing to do  
23 with the document.

24 MR. BANES: Well, okay. All right, Your Honor.  
25 I think the -- I think the document --

11:31:43

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: Counsel.

2 MR. BANES: Oh, I'm sorry, Your Honor. I think  
3 the documents give context, but --

11:31:55

4 THE COURT: If he was not aware of the document  
5 and cannot have the document introduced through him, it  
6 provides no context for his answer. Ask him about his  
7 personal knowledge.

8 MR. BANES: All right. All right, Your Honor.  
9 BY MR. BANES:

11:32:05

10 Q. All right. Mr. -- all right. Mr. Tweed, did you  
11 know that Marcia was asking Fisher & Phillips -- was  
12 seeking their advice about whether she should cover the  
13 Walker lawsuit?

14 A. I didn't even know who Fisher & Phillips was.

11:32:26

15 Q. All right. Is that a yes?

16 A. What's your question one more time?

17 Q. Did you know that Ms. Radel was seeking advice from  
18 Fisher & Phillips --

19 A. No.

11:32:34

20 Q. -- about whether to -- whether to cover the Walker  
21 lawsuit?

22 A. No.

23 Q. All right. Mr. Tweed, turn to Exhibit 135.

11:33:18

24 Now, Mr. Tweed, can you identify this  
25 document for the record, please?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** It's a document from Stephen Ropollo to Alia Wynne,  
2 subject Veritas.

3 **Q.** This is on September 11th, 2015?

4 **A.** Yes.

11:33:41

5 **Q.** Now, Mr. Tweed, I just have a couple of questions.

6 Did you -- did you speak to Ms. --  
7 Ms. Radel about apportioning responsibility prior to your  
8 discussion with Ms. Wynne on the 16th of September?

11:34:04

9 **A.** I explained to Marcia that I take responsibility  
10 after January of 2016.

11 **Q.** All right. But you didn't -- it says in here, "Ed  
12 has agreed to be responsible for any post January 1  
13 liability if Marcia covered litigation costs."

14 **A.** No.

11:34:16

15 **Q.** Was that your agreement?

16 **A.** No.

17 **Q.** Did she discuss that with you?

18 **A.** She alluded to that, you know, she would be  
19 interested in me helping her out because she was in  
20 financial problems.

11:34:25

21 **Q.** All right. Now, did you actually agree to that at  
22 this point?

23 **A.** No.

24 **Q.** Now, did you ever -- did you ever -- or turn to --  
25 all right. Actually, before I go there, sir, just look

11:35:45

EDWARD J. TWEED - DIRECT BY MR. BANES

1 back at 135.

2 The second -- the second sentence there --  
3 or the third sentence says, "At the end of this year,  
4 E & L and Veritas will amicably part ways."

11:36:04

5 Had you discussed that with Ms. Radel at  
6 that point, on September 11th of 2015, that you were going  
7 to be --

11:36:21

8 **A.** No. I never told -- I never told Marcia that we had  
9 intended to terminate her; however, we -- we were planning  
10 on terminating her.

11 **Q.** Did she tell you that she wanted -- was planning on  
12 shutting Veritas down?

13 **A.** No.

11:36:35

14 **Q.** So as of this point, September 11th, none of this was  
15 discussed at that point?

16 **A.** Right.

17 **Q.** All right. Now, Mr. Tweed, take a look at the  
18 document Exhibit 85.

19 **A.** All right.

11:38:25

20 **Q.** Okay. Mr. Tweed, did you ever see this document?

21 **A.** Well, it -- I know it was sent to Marcia. I don't  
22 see where it was sent to me.

23 **Q.** But you don't remember ever seeing this?

24 **A.** No.

11:38:54

25 **Q.** Was it ever -- was this option ever discussed with

EDWARD J. TWEED - DIRECT BY MR. BANES

1 you in terms of Ms. -- or Veritas paying all litigation  
2 costs if you agreed to certain other concession?

3 MR. SCHEXNAYDER: Objection; hearsay.

4 THE COURT: Overruled as to hearsay.

11:39:29

5 THE WITNESS: Could you restate the question  
6 for me, please?

7 BY MR. BANES:

11:39:37

8 Q. Was the option for Veritas to pay all litigation  
9 costs if you had other concessions, was that ever  
10 discussed with you by Fisher & Phillips?

11 A. No.

12 Q. Was it ever presented to you as an option?

13 A. No.

11:39:51

14 Q. Did you know that Fisher & Phillips was advising  
15 Ms. Radel on that prior to speaking with you?

16 A. No.

17 Q. Did they disclose that when they talked to you?

18 A. No.

19 Q. Turn to Exhibit 84, Mr. Tweed.

11:40:47

20 Did you ever see this document, sir?

21 A. No.

22 Q. Was it discussed with you at that time whether --  
23 adding you to make sure that you were jointly and  
24 severally liable on the fees? Was that discussed with you  
25 at the time?

11:41:06

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No. Is that the mucking up thing? Is that what  
2 you're talking about?

3 **Q.** Yeah. It's the -- yes.

4 **A.** No. I never heard anything about mucking anything  
5 up.

11:41:18

6 **Q.** Well, did you -- did you hear about -- did you hear  
7 that -- that making you jointly and severally liable for  
8 fees was being discussed at that time?

9 **A.** No.

11:41:29

10 **Q.** Did they discuss that with you at the time?

11 **A.** No.

12 **Q.** By "they" I mean Fisher & Phillips.

13 **A.** That's correct.

14 **Q.** Turn to Exhibit 64, Mr. Tweed -- 164. Sorry.

11:42:32

15 **A.** What book is that, please?

16 **Q.** It's in Book 3.

17 Can you identify this document for the  
18 record, Mr. Tweed?

19 **A.** It appears to be a document from Alia Wynne of Fisher  
20 Ropollo [sic] to Marcia Radel.

11:43:15

21 **Q.** Did you ever see this document at the time?

22 **A.** No.

23 **Q.** Did you know that Veritas had been named as a  
24 defendant prior to speaking with Ms. Wynne on the 16th of

11:43:34

25 September --

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** -- '15?

3 THE COURT: Mr. Tweed, again, let him finish  
4 his question.

11:43:40

5 THE WITNESS: I'm sorry, sir -- Your Honor.

6 BY MR. BANES:

7 **Q.** So just -- is it still a "no" at the end of that  
8 question, sir?

9 **A.** It's a "no."

11:43:49

10 **Q.** Let me ask it again.

11 **A.** Okay.

12 **Q.** All right?

13 Did you know that Veritas had been named  
14 as a defendant at the time you spoke with Ms. Wynne on the  
15 16th of September of '15?

11:43:58

16 **A.** No. That's exactly the reason that she told me that  
17 I needed to retain them.

18 **Q.** So -- and so what did she say about that?

19 **A.** She told me that I --

11:44:12

20 **Q.** What did Ms. -- excuse me. Strike that.

21 What did Ms. Wynne say about -- what did  
22 Ms. Wynne say about that?

23 **A.** She told me that she was contacting me to advise me  
24 that I needed to find legal representation or a lawyer

11:44:28

25 because Marcia was not included in the lawsuit, that I was

EDWARD J. TWEED - DIRECT BY MR. BANES

1 being sued along with E & L Transfer solely.

2 **Q.** So she told you that on the -- Ms. Wynne told you  
3 that on the 16th of September?

4 **A.** Right.

11:45:32 5 **Q.** Okay. Mr. Tweed, can you turn to Exhibit 137?

6 All right. Mr. Tweed, did Ms. Wynne tell  
7 you that she had reviewed the agreement between E & L and  
8 Veritas prior to speaking with you on the 16th?

9 **A.** No.

11:46:19 10 **Q.** Did she tell you what she had found in that  
11 agreement?

12 **A.** No.

13 **Q.** Looking at Exhibit 16 -- looking back at Exhibit 16,  
14 is any of what's contained in Exhibit 137 discussed or  
11:46:34 15 talked about in Exhibit 16?

16 **A.** No.

17 THE COURT: Just a moment.

18 MR. SCHEXNAYDER: Well, hearsay. He is  
19 referencing a document that hasn't been admitted.

11:46:53 20 THE COURT: I'm not sure the utility -- you're  
21 doing this for me, and I'm not sure of the utility of  
22 asking the witness about documents he purports to have  
23 never seen, comparing them to other documents in that  
24 regard. This witness has personal knowledge of certain  
11:47:13 25 things or he doesn't. That's what I am interested in.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 So when you're asking him about things he  
2 hasn't seen and isn't his opinion here sitting on the  
3 stand, that doesn't do anything for me by way of advancing  
4 your burden of proof. So --

11:47:27

5 MR. BANES: Well, I understand that, Your  
6 Honor. I'm just trying to establish for the record that  
7 Mr. Tweed wasn't told any of these things. So I have to do  
8 that much.

11:47:38

9 THE COURT: And you can -- and I pointed this  
10 out, but you can ask him that question, as to what he was  
11 told, when he was told. When you reference a document in  
12 that regard and you read from it or you have him to read  
13 from it, you're circumventing the hearsay rule or a  
14 potential challenge to the document being admitted in  
15 evidence.

11:47:57

16 MR. BANES: Okay, Your Honor. I understand  
17 that. But at the same time, I have to -- I mean, I can --  
18 I can -- you know, if we were before a jury, I would be  
19 handling this a little bit differently. But, you know,  
20 I -- we will ultimately be able to establish that this  
21 document is authentic.

11:48:12

22 THE COURT: You picked the order of your  
23 witnesses and you have picked the order of your  
24 presentation.

11:48:22

25 MR. BANES: Right.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: And to the extent that you have  
2 picked this order where this evidence that you want to  
3 reference is not in evidence, it's of no utility to me.  
4 You have to have it in evidence before I can consider it in  
5 any proper and meaningful way, sir.

11:48:35

6 MR. BANES: I understand that, Your Honor.

7 THE COURT: All right.

8 BY MR. BANES:

9 Q. Let's just ask it this way: Turning back to Exhibit  
10 16, Mr. Tweed, which is in Binder 1, is anything -- of all  
11 the matters that we have discussed with respect to the  
12 agreement between Veritas and -- and E & L, were any of  
13 those issues that are contained in there discussed with  
14 you specific to that agreement by Fisher & Phillips prior  
15 to the conflict waiver?

11:49:19

16 A. No.

17 Q. Okay. Turn to Exhibit 173, Mr. Tweed.

18 Okay. Mr. Tweed, September 16th, you have  
19 testified that that was the conversation you had with  
20 Ms. Wynne.

11:52:28

21 All right. Now, was that the only  
22 conversation that you had with anyone from Fisher &  
23 Phillips prior to the conflict waiver being executed?

24 A. Yes.

25 Q. Did Mr. Ropollo call you and talk to you at all?

11:52:44

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** All right. Now, I want you to -- I want you to tell  
3 the Court exactly what Ms. Wynne said to you on September  
4 16th.

11:52:57

5 **A.** Ms. Wynne explained to me that -- that I -- that I  
6 was in -- I was failing to comply with the responsible  
7 letter for a lawsuit from Mr. Walker, that I was the only  
8 party, me and my company, me personally and my company,  
9 who were being held responsible for the lawsuit and that

11:53:22

10 Marcia and Veritas, because they were not named, are not  
11 considering being part of the lawsuit, that I needed my  
12 own counseling. I needed specific counseling.

13 **Q.** All right. Did they -- did they say that you could  
14 go get any counsel for this?

11:53:40

15 **A.** She told me that it would be smart for me if I signed  
16 their agreement and let them represent me because -- that  
17 they had already done similar cases for me on the other  
18 clients and settled them.

11:54:03

19 **Q.** All right. Now, what was the -- now, did you -- had  
20 you talked to her prior to that?

21 **A.** No.

22 **Q.** Had you talked to anyone at Fisher & Phillips prior  
23 to that?

24 **A.** No.

11:54:08

25 **Q.** Had you talked to Ms. Radel about any apportionment

EDWARD J. TWEED - DIRECT BY MR. BANES

1 of any fees or damages --

2 **A.** No.

3 **Q.** -- for the case?

4 All right. Now -- so how was that raised  
5 to you? How was apportionment raised to you?

11:54:18

6 **A.** She told me that Marcia had contacted her to let her  
7 know that -- that she had -- she should call me and  
8 arrange to see if I had interest in them covering --  
9 representing me because they had all of this background  
10 information from the other suits.

11:54:38

11 **Q.** Now, did you -- did you express to her that -- some  
12 surprise about that?

13 **A.** Yeah. I told her specifically, I said that, "I have  
14 a contract with Marcia to indemnify me from lawsuits.  
15 That is the only purpose of having her here."

11:54:57

16 **Q.** And what did she -- what did Ms. Wynne say to you at  
17 that point?

18 **A.** She said, "Well, the problem is is that she wasn't  
19 named in this lawsuit, Marcia or her company."

11:55:09

20 **Q.** And what did she -- what did she say the implications  
21 of that were?

22 **A.** She said that, "You're going to be sued. It's  
23 possibly going to be a class action, and it will probably  
24 destroy your company."

11:55:23

25 **Q.** And was she harsh with you when you disagreed with

EDWARD J. TWEED - DIRECT BY MR. BANES

1 her about any of that?

2 **A.** She was -- she was extremely aggressive.

3 **Q.** Did she make you feel like you had any other option?

4 **A.** She made me feel like I was an idiot.

11:55:41

5 **Q.** Did she discuss any other options or alternatives  
6 with you?

7 **A.** No.

8 **Q.** After the conflict waiver was sent to you, did anyone  
9 talk to you at that point from Fisher & Phillips?

11:55:57

10 **A.** No.

11 **Q.** Why did you sign the conflict waiver?

12 **A.** Because I thought that -- I listened to Ms. Alia  
13 Wynne -- that was my only option and that the window was  
14 getting smaller for me to respond and that I was in a lot  
15 of trouble.

11:56:18

16 **Q.** All right. Let's take a look at Exhibit 16 for a  
17 moment, sir.

18 THE COURT: Before we take a look at Exhibit  
19 16, we're approaching the lunch hour. Is this a good time  
20 to stop, you think?

11:57:14

21 MR. BANES: This is probably a good time to  
22 stop, Your Honor.

23 THE COURT: Counsel, we have reached our lunch  
24 break. Before we take a break, is there anything we need  
25 to take care of before we recess?

11:57:28

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: I don't think so, Your Honor.

2 MR. SCHEXNAYDER: No, Your Honor.

3 THE COURT: Very well. Back at 1:00.

4 THE LAW CLERK: All rise.

11:57:36 5 (Proceedings recessed from 11:57 a.m. to 12:59 p.m.)

6 THE LAW CLERK: All rise.

7 THE COURT: Thank you. Please be seated.

8 Counselor.

9 MR. BANES: Thank you, Your Honor.

01:00:06 10 BY MR. BANES:

11 Q. Mr. Tweed, we were about to go into Exhibit 16.

12 MR. BANES: Can you pull that up for us?

13 BY MR. BANES:

14 Q. Okay. Mr. Tweed, can you turn to page 2 of the  
01:00:40 15 document?

16 Now, take a look at the part that says  
17 "Apportionment of fees and damages related to the  
18 lawsuits," sir. Do you see that part?

19 A. Uh-huh. Yes.

01:01:17 20 Q. Take a look at that and just read that for a minute.

21 A. Okay.

22 Q. All right. Now, who came up with that apportionment?

23 A. It appears to me Veritas and Fisher & Phillips.

24 Q. Now, did you have any input into that before it being  
01:02:27 25 put on paper like this?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** Did the idea come from you?

3 **A.** No.

4 **Q.** All right. Now, as far as the potential conflicts

01:02:38 5 go, just take a look at potential conflicts 1 through 5 on  
6 pages 2 through 3, sir.

7 Mr. Tweed, with respect to potential  
8 conflict numbers 1 through 5, were any other conflicts  
9 disclosed to you by Fisher & Phillips other than what's in  
10 the document here?

01:04:27

11 **A.** No.

12 **Q.** Were they described to you in any other way than is  
13 portrayed in this document?

14 **A.** No.

01:04:34

15 **Q.** Was anything oral said to you in addition that might  
16 elaborate further on these conflicts?

17 **A.** No.

18 **Q.** With respect to -- turn to page 4, sir, and take a  
19 look at paragraph 2 there, the consequences -- that starts  
20 "The consequences."

01:05:12

21 **A.** Okay.

22 **Q.** Were any other consequences discussed with you prior  
23 to executing the conflict waiver?

24 **A.** No.

01:05:49

25 **Q.** Look at the advantages of joint representation.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Let me know when you're done with that,  
2 sir.

3 **A.** I am finished.

01:06:23

4 **Q.** All right. Were any other advantages disclosed to  
5 you other than the cost savings or the other things in  
6 that paragraph?

7 **A.** No. No advantages.

8 **Q.** All right.

01:06:36

9 Were there any oral disclosures of any  
10 kind that would have supplemented this other than that  
11 conversation you had with Ms. Wynne on September 16th?

12 **A.** No.

13 **Q.** Take a look at page 5, sir.

01:07:21

14 Now, how did you sign this document? In  
15 what capacity?

16 **A.** As the -- as an officer of E & L.

17 **Q.** Did you also sign it individually?

18 **A.** Yes.

19 **Q.** Now, how did Ms. Radel sign it on this?

01:07:33

20 **A.** She signed it on -- she looks like she signed it for  
21 Veritas Personnel.

22 **Q.** So Ms. Radel individually wasn't a party to this?

23 **A.** Doesn't appear to be.

01:08:07

24 **Q.** Was the fact that she wasn't individually a party  
25 discussed with you at the time?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No.

2 **Q.** Were any advantages or disadvantages of her absence  
3 from the agreement individually discussed with you?

4 **A.** No.

01:08:18

5 **Q.** Were any consequences for her not being a party --  
6 for Ms. Radel not being a party individually to the  
7 agreement discussed with you?

8 **A.** No.

01:08:35

9 **Q.** Did Ms. Wynne say anything about Ms. Radel's  
10 liability in your conversation with her on September 16th?

11 **A.** No.

12 **Q.** She didn't say anything about that?

13 **A.** She said that Mrs. Radel -- Mrs. Radel had no  
14 responsibility because she wasn't named, that I was  
15 totally responsible.

01:08:56

16 **Q.** All right. Other than that did she discuss the  
17 implications of her not being a party to the conflict  
18 waiver?

19 **A.** No.

01:09:33

20 **Q.** Mr. Tweed, ultimately Fisher & Phillips withdrew from  
21 the representation of both you and Ms. Radel.

22 Do you remember that?

23 **A.** I know it happened. I am not real sure of the time  
24 frame, but I know it happened, yes.

01:09:47

25 **Q.** Do you know -- sitting here today, do you know why

EDWARD J. TWEED - DIRECT BY MR. BANES

1 they told you that they were doing that?

2 **A.** No.

3 **Q.** All right. Let's take a look at Exhibit 119 first.

4 It's in -- it is in Book 2, sir.

01:10:45

5 First of all, can you identify this

6 document for the record, Exhibit 119, sir?

7 **A.** It looks like it's a document from Alia to Marcia and  
8 copied me, Steve Ropollo and Kristin Graner.

9 **Q.** Prior to getting this document, did you know that

01:11:16

10 Veritas was going to dissolve itself?

11 **A.** No.

12 **Q.** Had that been discussed with you by anybody?

13 **A.** No.

14 **Q.** Was there any subsequent discussion with you about

01:11:28

15 what implications that might have on you, E & L and the  
16 lawsuit?

17 **A.** No.

18 **Q.** When this was disclosed to you, did anyone come to

19 you and ask you for a new conflict waiver of any kind?

01:11:59

20 **A.** No.

21 **Q.** Did you get the impression at this point that Ms. --

22 well, did you understand at this point that Ms. -- or

23 Veritas wasn't going to hold up their end of the

24 agreement, the -- or the apportionment in the conflict

01:12:25

25 waiver?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** Did I? No. I did not think that.

2 **Q.** Did anyone tell you that they were -- that they were  
3 going to breach it at that point?

4 **A.** No. No.

01:12:42

5 **Q.** All right.

6 MR. BANES: Now, move to admit Exhibit 119,  
7 Your Honor. I am offering 119.

8 MR. SCHEXNAYDER: I'm sorry, Judge. No  
9 objection.

01:12:58

10 THE COURT: Plaintiff's 119 is admitted without  
11 objection.

12 BY MR. BANES:

13 **Q.** Mr. Tweed, at this point in the litigation, did  
14 anyone from Fisher & Phillips mention anything about ADP  
15 to you at this point?

01:13:35

16 **A.** No.

17 **Q.** Did anyone talk to you about implications of Ms. --  
18 of Veritas dissolving?

19 **A.** No.

01:13:46

20 **Q.** What was the next communication you remember getting  
21 from them about this issue?

22 **A.** I -- I don't recall any discussions. I don't recall.

23 **Q.** Well, they didn't call you and talk to you about it?

24 **A.** No.

01:14:07

25 **Q.** All right. Now, at some point did you get an e-mail

EDWARD J. TWEED - DIRECT BY MR. BANES

1 from Ms. Wynne saying that they were going to withdraw?

2 **A.** I -- to be honest with you, I don't know what  
3 happened, how I found out that they were going to  
4 withdraw.

01:14:26 5 **Q.** All right. Let's take a look at Exhibit 124 --

6 **A.** Okay.

7 **Q.** -- Plaintiff's Exhibit 124.

8 And just take a look at that, sir, and  
9 then we will talk about it.

01:15:46 10 **A.** Okay. I have read through it.

11 **Q.** Do you remember getting this e-mail, sir?

12 **A.** I know what I do remember is that -- I remember  
13 hearing that they were withdrawing because Marcia refused  
14 to pay their invoices.

01:16:02 15 **Q.** Okay. All right. So who -- who told you that?

16 **A.** I'm not sure.

17 **Q.** All right. Do you know if Ms. Wynne told you that?

18 **A.** Well, she was the only person I -- that I -- that I  
19 know that I ever talked to there.

01:16:23 20 **Q.** All right. So, do you think it came to her -- from  
21 her?

22 **A.** I would think it would have had to have come from  
23 her.

01:16:34 24 **Q.** All right. Now, it says in the third paragraph, "We  
25 have become aware that Veritas due to its financial

EDWARD J. TWEED - DIRECT BY MR. BANES

1 condition may not be able to meet the financial  
2 obligations that were agreed to in the September 28th  
3 letter."

4 **A.** Right.

01:16:42

5 **Q.** Was this the first notice that you received that  
6 Veritas might breach the agreement that was reached in the  
7 conflict waiver?

01:16:56

8 **A.** Yeah. Even if -- that's even if I ever got this  
9 letter. I mean, it doesn't show that -- it shows my name  
10 on it, but -- it shows it's from Alia. I mean, her card  
11 is behind it, so...

12 **Q.** At this point did you -- is this when Fisher &  
13 Phillips started moving to withdraw?

01:17:14

14 **A.** Yeah. I was notified that I would have to find a  
15 different attorney.

16 **Q.** All right. And that's what you did?

17 **A.** Yes.

18 **Q.** All right. Now, let's go back to one document before  
19 we head off -- go on that, sir.

01:17:52

20 MR. BANES: Is a copy of you all's exhibits up  
21 there?

22 MR. SCHEXNAYDER: I don't know. Take one up.

23 MR. BANES: Thank you.

24 Your Honor, may I approach.

01:18:06

25 THE COURT: The witness?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: Yes, Your Honor.

2 THE COURT: You may.

3 BY MR. BANES:

01:18:38

4 Q. Sir, can you turn to Defendant's Exhibit 9? Take a  
5 look at this document, sir, and I am going to ask you to  
6 identify it for the record.

7 A. Take a --

8 Q. Take a look at it, sir.

01:18:55

9 A. It's -- I'm sorry. It's an engagement letter between  
10 me and Fisher & Phillips. It appears to be.

11 Q. Now, turn to the last page of it.

12 Is that your signature at the bottom?

13 A. Yes.

01:19:12

14 Q. All right. Now, turn to the -- turn to the first  
15 page of the document, paragraph 3.

16 A. Okay.

17 Q. It says in there, "Because you and" -- "you and E & L  
18 are new clients."

01:19:25

19 What did you take that to mean at the  
20 time?

21 A. I took it to mean that I was now a new paying client.

22 Q. And did you think that you were a new client of  
23 Fisher & Phillips at that time?

01:19:37

24 A. Well, they had been representing me all along, so I  
25 just thought that now I had to start paying them for what

EDWARD J. TWEED - DIRECT BY MR. BANES

1 they have been doing over -- for the other cases.

2 Q. And you felt that based on the communication you had  
3 with Ms. Wynne before?

4 A. Yeah. I never had to pay for this before, and then  
01:19:58 5 all of a sudden, she said that I would have to give her a  
6 retainer of -- I think -- I thought it was \$15,000. So,  
7 the first check I think was 7500.

8 Q. Now, take a look at Exhibit 198, sir.

9 MR. SCHEXNAYDER: 198?

01:20:35 10 MR. BANES: Plaintiff's Exhibit 198.

11 Oh, Your Honor, I am going to move to  
12 admit Defendant's Exhibit 9.

13 MR. SCHEXNAYDER: No objection.

14 THE COURT: Defendant's 9 is admitted without  
01:21:04 15 objection.

16 BY MR. BANES:

17 Q. Mr. Tweed, can you tell me what these documents are  
18 in Exhibit 198?

19 A. In --

01:21:18 20 Q. Oh, Book 4.

21 A. Okay. Make some room here. Book 5, 198.

22 Q. Now, what are these documents in here?

23 A. These are -- this looks like billing, the billing  
24 from Steve Ropollo of Fisher & Phillips to me.

01:21:58 25 Q. Does this -- taking a look back at the -- the last

EDWARD J. TWEED - DIRECT BY MR. BANES

1 few -- the last three pages of this tab, are those the  
2 checks that you sent and were cashed by Fisher & Phillips?

3 **A.** Yes.

4 **Q.** All right. So this comprises the sum that you paid  
01:22:23 5 them during their representation of you on the Walker  
6 case?

7 **A.** Yes.

8 **Q.** All right. Now, did -- did Fisher & Phillips tell  
9 you that they -- that you owed them anything else?

01:22:35 10 **A.** I don't believe so, no.

11 **Q.** All right. Now, after you -- now, who did you engage  
12 as new counsel when -- when Fisher & Phillips withdrew?

13 **A.** I contacted you, Bryant Banes, off of advice from my  
14 California lawyer.

01:23:03 15 **Q.** Okay. Now, take a look at exhibit -- now, did you --  
16 did you incur attorneys' fees and expenses on the lawsuit  
17 against the plaintiffs, with me? Did you have to pay me  
18 money?

19 **A.** Did I have to pay -- who was that?

01:23:30 20 **Q.** Did you have to pay -- did you retain my firm and pay  
21 us for representing you in the -- in the lawsuit  
22 against -- versus the plaintiffs in the Walker suit?

23 **A.** I paid -- I paid you for representation in the  
24 lawsuit, yes.

01:23:46 25 **Q.** All right. So we represented you in E & L -- we

EDWARD J. TWEED - DIRECT BY MR. BANES

1 represented E & L and Tweed in that lawsuit?

2 **A.** Yes.

3 **Q.** And we billed you for that?

4 **A.** Yes, you did.

01:23:56 5 **Q.** Now, can you look at Exhibit 202, sir?

6 **A.** Okay.

7 **Q.** Now, does this represent the billings to you from our  
8 representation of you versus the plaintiffs in the Walker  
9 suit?

01:24:26 10 **A.** Yeah. B.S.B. is Bryant Banes. Yeah.

11 **Q.** Okay. And then Exhibit 203, does that represent the  
12 expenses, pay for the same matter?

13 **A.** Yeah.

14 **Q.** All right. Now, did you also -- when -- now,  
01:25:00 15 ultimately, the Walker suit was settled with respect to  
16 the plaintiffs.

17 Do you remember that?

18 **A.** Right.

19 MR. BANES: Now, Your Honor, I move -- move to  
01:25:26 20 admit Exhibits 200 and 201 -- or, excuse me, 202 and 203.  
21 I'm sorry.

22 MR. SCHEXNAYDER: No objection.

23 THE COURT: And, Counsel, just so you know, on  
24 the exhibit list that I have, those are not listed on your  
01:25:51 25 exhibit list. So these are exhibits that were later added?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. BANES: Yes, Your Honor. That's accurate.

2 Sorry about that. I should have had those on there.

3 THE COURT: So 202 and 203 is what you said?

4 MR. BANES: Yes, Your Honor.

01:26:08

5 THE COURT: Plaintiff's 202 and 203 are  
6 admitted without objection.

7 MR. BANES: And we also offer Exhibit 198, Your  
8 Honor.

9 THE COURT: Any objection?

01:26:29

10 MR. SCHNEXNAYDER: No objection.

11 THE COURT: Plaintiff's 198 is admitted without  
12 objection.

13 THE WITNESS: Your Honor, could I ask a  
14 question? Is it responsible for me to keep this jacket on?  
15 It's like -- I am roasting up here under these lights.

01:27:09

16 THE COURT: You may remove your jacket.

17 THE WITNESS: Thank you, sir. Thank you, sir.

18 BY MR. BANES:

19 Q. Okay. Sir, take a look at Exhibit 197.

01:27:44

20 Was this -- can you identify this document  
21 for the record, sir?

22 A. This is a confidential settlement agreement and  
23 release.

24 Q. All right. Now --

01:28:02

25 A. Go ahead. I'm sorry.

EDWARD J. TWEED - DIRECT BY MR. BANES

1 Q. -- does this document represent the sum you had to  
2 pay the plaintiffs in the Walker lawsuit?

3 A. Yes.

01:28:25

4 Q. Did the last three pages -- does that represent the  
5 sums actually paid to the plaintiffs by you in the e-mail?

6 A. Yes.

7 Q. Okay. Now, turn to page -- turn to paragraph 9 of  
8 the agreement, Mr. Tweed, on page 4.

9 A. Okay.

01:29:03

10 Q. All right. Take a look at the last sentence of that  
11 paragraph.

12 A. The one that says "Walker is hereby advised"?

13 Q. It says, "This settlement, release, waiver and  
14 discharge..." it's paragraph 9 on page 4.

01:29:23

15 A. Okay. So, "This settlement, release, waiver and  
16 discharge of claims does not include any claims Radel or  
17 Veritas may have against Fisher & Phillips."

18 Q. So you didn't -- so by signing this, you didn't  
19 intend to release Fisher & Phillips from any claims that  
20 you had against them?

01:29:40

21 MR. SCHEXNAYDER: Objection, Your Honor. It  
22 mischaracterizes the document. It is talking about Radel  
23 and Veritas, not him.

24 MR. BANES: Well, it talks about -- oh, I'm  
25 sorry. Strike that whole line of questioning, Your Honor.

01:29:51

EDWARD J. TWEED - DIRECT BY MR. BANES

1 BY MR. BANES:

2 Q. Turn to paragraph 8.

3 THE COURT: Now, what exhibit are you looking  
4 at again, for the record?

01:30:06 5 MR. BANES: I am looking at Exhibit 197, Your  
6 Honor, paragraph 8.

7 THE COURT: All right.

8 MR. BANES: I was looking at the wrong  
9 paragraph. I'm sorry.

01:30:12 10 BY MR. BANES:

11 Q. So take a look at paragraph 8.

12 A. Okay.

13 Q. All right. So the last sentence of paragraph 8, did  
14 you -- what is that -- what does that provision do?

01:31:01 15 A. It says, "The settlement, release, waiver and  
16 discharge of claims does not include any claims by E & L,  
17 Mr. Tweed against Fisher & Phillips, including any that  
18 are a derivative or related to claims or cross-claims  
19 against others in the agreement by E & L, and Mr. Tweed's  
01:31:20 20 lawsuit against Fisher & Phillips survives this  
21 agreement."

22 Q. Now, at the time you signed this agreement, did you  
23 know about any contribution to Radel or Veritas by ADP?

24 A. Absolutely not.

01:31:36 25 Q. Did Fisher & Phillips tell you anything about that?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 **A.** No. They did not.

2 **Q.** Mr. Tweed, turning back to Exhibit 16 again in Book

3 1.

4 **A.** Okay.

01:32:46 5 **Q.** Did you ever seek any legal advice on that agreement?

6 **A.** No.

7 **Q.** Why not?

8 **A.** Well, I had never had any reason to believe that

9 anybody was going to be dishonest with me. They had

01:33:03 10 been -- they had been working on these cases, all  
11 identical, over and over again for over a period of time  
12 that I expected that everybody was going to be honest and  
13 up -- onboard.

14 **Q.** Do you -- did you feel like you could go to talk to  
01:33:21 15 another lawyer?

16 **A.** I was told that I didn't have time. The time was of  
17 an essence. Nobody would be able to get up to speed in  
18 time to protect me in this lawsuit, especially since  
19 Veritas wasn't going to be involved, that I would be all  
01:33:36 20 alone and have to start all over again.

21 **Q.** And who told you that?

22 **A.** Alia.

23 **Q.** Ms. Wynne?

24 **A.** Uh-huh.

01:33:45 25 THE COURT: "Uh-huh," is that a "yes" or a

EDWARD J. TWEED - DIRECT BY MR. BANES

1 "no"?

2 THE WITNESS: Yes. Yes, sir. Yes, Your Honor.

3 MR. BANES: Give me a few minutes, Your Honor.

4 I might be finishing up with Mr. Tweed.

01:35:32

5 I was going to offer -- Exhibit 199 are  
6 the documents released from ADP, deposition on written  
7 questions. So I was going to introduce that -- or offer  
8 that for admission.

01:35:47

9 THE COURT: You were going to do it, or are you  
10 doing it?

11 MR. BANES: I am doing that.

12 THE COURT: Counsel, any objection to  
13 Plaintiff's 199?

14 MR. BANES: 199, Your Honor.

01:36:02

15 THE COURT: 199. Yes.

16 MR. SCHEXNAYDER: Yes, sir. I object on  
17 hearsay.

18 THE COURT: 199, I am not -- I am unclear as to  
19 what this is. I am looking at --

01:37:04

20 MR. BANES: This is a deposition on written  
21 questions to ADP, Your Honor.

22 THE COURT: Just a moment.

23 MR. BANES: I'm sorry, Your Honor.

01:37:11

24 THE COURT: I see United States District Court  
25 for the subpoena. Then starting after the subpoena, it

EDWARD J. TWEED - DIRECT BY MR. BANES

01:37:55

1 starts with exhibit, definitions, and it moves into  
2 documents requested. And then it has an Exhibit A that  
3 contains e-mails, correspondence, and it appears to be  
4 payroll or checks and more invoicing and billing, summons  
5 and Plaintiff's original complaint and a host of documents.  
6 There is not -- the reason I want to make that comment is  
7 because it is a host of documents, not one class of  
8 documents. So, in regards to the hearsay objection,  
9 Counsel, what say you?

01:38:17

10 MR. BANES: Well, it's records of regularly  
11 conducted business activity by ADP, Your Honor. This  
12 document was done through a notice of intention to take  
13 deposition on written questions. Mr. Schexnayder was given  
14 an opportunity to depose them and talk to them as well.

01:38:33

15 They have sworn that these documents are their internal  
16 documents relevant to the issues that are in this. There  
17 is no dispute over that. And there was no objection in the  
18 pretrial order about the -- or about the authenticity of  
19 these documents as business records from ADP.

01:38:49

20 So they're authentic, and they --  
21 they're -- you know, they're sworn, and they're proper --  
22 properly before the Court in terms of under Rule 31.

01:39:10

23 THE COURT: Counsel, what say you in that  
24 Mr. Banes has pointed out that prior to today you had not  
25 registered any objection?

EDWARD J. TWEED - DIRECT BY MR. BANES

1 MR. SCHEXNAYDER: Your Honor, this is not  
2 presented as a deposition by written questions. There is  
3 no sworn statement anywhere in here by the witness.

4 THE COURT: It says notice -- the third --

01:39:33

5 MR. BANES: That is on page --

6 THE COURT: Yeah, notice of intention to take  
7 deposition by written questions.

8 MR. SCHEXNAYDER: Right.

01:39:45

9 THE COURT: And then it goes into the very next  
10 page, which is the subpoena. I don't see the questions for  
11 the deposition on written questions.

12 MR. SCHEXNAYDER: That is my point. There is  
13 no answers either.

01:39:57

14 MR. BANES: They're on page -- as you go into  
15 the document, Your Honor, there's -- there's the --

16 THE COURT: I see the definitions. Documents  
17 requested, is that what you're referring to?

18 MR. BANES: No, Your Honor. It is after that.  
19 There is the -- when you get to Exhibit A --

01:40:19

20 THE COURT: So this is out of order.

21 MR. BANES: A little bit. That's -- the direct  
22 questions to be propounded by the witness are right here.  
23 And then there's --

01:40:33

24 THE COURT: Yes. Okay. I see the  
25 deposition -- direct questions to be propounded to the

EDWARD J. TWEED - DIRECT BY MR. BANES

1 witness several pages into the document.

2 MR. BANES: Yes, Your Honor. And then there is  
3 a letter from the general counsel of ADP that's attached to  
4 that and incorporated in that that explains the responses  
5 to the requests.

01:40:50

6 MR. SCHEXNAYDER: May I respond, Your Honor?

7 THE COURT: Yes, sir.

8 MR. SCHEXNAYDER: That letter he is referencing  
9 clearly is not one of the business records to begin with.

01:41:15

10 That is a separate piece of correspondence. That is  
11 hearsay. And we don't have any indication which of these  
12 documents was actually attached to the deposition by  
13 written questions due to the fact that there are documents  
14 before and after those questions and answers.

01:41:27

15 And lastly, I would say he didn't identify  
16 this particular custodian of records as a witness on his  
17 witness list, and that's how he is trying to get it in  
18 through a witness who is not here.

01:41:40

19 And lastly, I don't see the relevance of  
20 all of these documents to this case, and he hasn't proved  
21 it up through Mr. Tweed.

01:41:55

22 THE COURT: Okay. The problem that I have with  
23 this document, as you have correctly pointed out, is it is  
24 out of order. So in regards to the deposition on written  
25 questions, as counsel has pointed out, it does not indicate

EDWARD J. TWEED - DIRECT BY MR. BANES

1 to me what documents she attached to her response because  
2 there are documents before and after. And obviously, in  
3 regards to the letter dated October the 4th, 2018, the  
4 letter from the counsel, I would assume that that wasn't  
5 part of the production coming back from the deposition on  
6 written questions. Or was it?

01:42:18

7 MR. BANES: No, sir. This -- this was all  
8 together, and I -- even though it is in this order, this is  
9 the order I got it in. So, it was -- the deposition -- the  
10 direct questions propounded by the witness and then the --  
11 the ADP document behind it is exactly the order. And it --  
12 if you look at the documents, they go -- they reference --

01:42:31

13 THE COURT: Well, I am looking at Bates number  
14 starting at Number 1 after the letter.

01:42:49

15 MR. BANES: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. BANES: Those are the documents themselves  
18 that are referenced in there.

01:42:55

19 THE COURT: Okay. Well, the letter dated  
20 October the 4th doesn't even have a Bates number, which  
21 indicates to me it is a different part or not part of the  
22 production.

23 MR. BANES: No. It was -- it was behind the  
24 direct questions, because it delineates which documents or  
25 what and how they respond to the questions.

01:43:08

EDWARD J. TWEED - DIRECT BY MR. BANES

1 THE COURT: That doesn't make any sense to me,  
2 Counsel.

3 MR. BANES: Well --

01:43:15

4 THE COURT: And maybe it is because it is out  
5 of order. But I see the notice of delivery, the notice of  
6 intent. I see the subpoena. Then I see the exhibit,  
7 documents requested. Then I see Exhibit A. Then I see the  
8 direct questions to be propounded to the witness.

01:43:58

9 So the documents from Exhibit A up to the  
10 page that has direct questions to be propounded to the  
11 witness, it seems that that was not part of the production  
12 but was sent to the custodian of records to be responding  
13 to at a minimum, and then after that --

14 MR. BANES: Well --

01:44:13

15 THE COURT: Counsel, let me finish.

16 MR. BANES: Oh, I'm sorry, Your Honor.

17 THE COURT: After the direct question, there is  
18 a letter. After those two pages, there is a Bates number.

01:44:29

19 In my experience, the Bates numbers typically are the  
20 documents that are produced. The first Bates number is 1.

21 MR. BANES: Yes, Your Honor.

22 THE COURT: To the extent that that was part of  
23 the production, she would -- the custodian would have

01:44:43

24 stamped the letter dated October the 4th as part of the  
25 production. That wasn't done. So that indicates to me it

EDWARD J. TWEED - DIRECT BY MR. BANES

1 is not part of the production from what I'm just looking at  
2 here. The Bates numbers go on 1 through 83. So, it  
3 appears to me that it's the documents that are stamped 1  
4 through 83 which are part of the response to the deposition  
5 on written questions.

01:45:07

6 MR. BANES: Well, that's -- okay, Your Honor.  
7 I mean, this -- this was produced to me this way. So, it  
8 was purported to be part of it. But we don't really need  
9 the letter, you know.

01:45:24

10 THE COURT: Well, I tell you what, let's do  
11 this. On the next break, why don't you go through  
12 Plaintiff's Exhibit 199 and give me a better idea of what  
13 you're offering. Because as it is now, I am going to  
14 sustain the objection. I suspect that on the deposition to  
15 written questions that there are documents or a production  
16 that I will allow in evidence, but from what I am looking  
17 at right now, I can't make heads or tails as to what she  
18 included in the production versus what has just been thrown  
19 together in this exhibit through either --

01:45:42

20 MR. BANES: Well, Your Honor, the request  
21 actually refer -- the letter actually refers to the  
22 requests, and it delineates which documents are responsive  
23 to what. So, it does say Request Number 1 through Number  
24 5.

01:46:04

25 THE COURT: Show me in your request where you

01:46:17

EDWARD J. TWEED - DIRECT BY MR. BANES

1 asked for a letter from counsel for them to do that.

2 MR. BANES: Well, I didn't ask for that.

3 THE COURT: Okay. Well, then, why would that  
4 be responsive to anything you have asked for?

01:46:28 5 MR. BANES: Well, that's just how they did it,  
6 Your Honor.

7 THE COURT: Okay. Well, they did it  
8 incorrectly. So what I am looking at does not indicate to  
9 me that all of these documents were included in the  
01:46:47 10 response, and as such, I am going to sustain the objection.  
11 I am going to give you the opportunity over the next break  
12 to go through the document and make sure that it's in  
13 order. If you can do so, then I will re-entertain your  
14 offer of having that admitted. Simple. The way that it is  
01:47:06 15 currently put together gives me no confidence that this  
16 reflects the production from the witness.

17 MR. BANES: Okay, Your Honor.

18 THE COURT: Very well. What's next?

19 MR. BANES: Okay. That's all I have for  
01:48:03 20 Mr. Tweed at this time. Oh, I'm sorry, Your Honor. That  
21 is all I have for Mr. Tweed at this time. I am going to  
22 reserve the right to recall him on rebuttal.

23 THE COURT: You pass the witness?

24 MR. BANES: But I pass the witness for now.

01:48:13 25 THE COURT: Any cross for this witness?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 MR. SCHEXNAYDER: I do, Your Honor. May I  
2 proceed?

3 THE COURT: You may, sir.

4 MR. SCHEXNAYDER: All right.

01:48:18

5 **CROSS-EXAMINATION**

6 BY MR. SCHEXNAYDER:

7 Q. Mr. Tweed, do you still have my documents, which is  
8 in that small white binder?

9 A. Yes, sir.

01:48:25

10 Q. All right, sir. Before I get to that, I want to fill  
11 in some details about you.

12 How old are you, sir?

13 A. I am 63.

14 Q. Where did you grow up?

01:48:40

15 A. I grew up in a small town called East Stroudsburg,  
16 Pennsylvania.

17 Q. All right. What was your level of education?

18 THE COURT: Counsel, pull your mic down towards  
19 you, and that will help the court reporter. Thank you.

01:48:51

20 A. I graduated from high school and took a couple of  
21 classes of summer school.

22 BY MR. SCHEXNAYDER:

23 Q. All right. And have you been in the logistics  
24 business your entire career?

01:49:02

25 A. Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. All right. And you have owned your own company for a  
2 substantial portion of that career?

3 A. Yes, 2004, as I stated earlier.

01:49:21

4 Q. All right. And as the owner of a small business --  
5 would you describe it as a small business? Large  
6 business? Medium?

7 A. I don't describe it as any of that. I describe it as  
8 my business.

01:49:34

9 Q. All right. And I guess you would prepare corporate  
10 documents to create the legal entity that you are running  
11 as part of your business?

12 A. I had a lawyer do that for me in Sacramento,  
13 California.

14 Q. All right. Why Sacramento?

01:49:47

15 A. Because that is where I was living at the time.

16 Q. All right. So, you knew enough to go get a lawyer  
17 when you needed some help creating some legal corporate  
18 documents, right, sir?

01:50:03

19 A. No. I was told by FedEx Ground that I couldn't -- I  
20 couldn't purchase the -- the independent contractor truck  
21 unless I had a business name.

22 Q. Right. But you weren't going to go out and  
23 incorporate that business yourself. You went out and  
24 found a lawyer to do it for you; is that correct, sir?

01:50:20

25 A. No. I went over to the courthouse, and they told me

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 what to do.

2 Q. I thought you said you had a lawyer do that.

3 A. I went to the courthouse, and they told me what

4 documents I had to draft. And then one of the guys at

01:50:33 5 the Knights of the Columbus told me, you know, to -- to

6 talk to a lawyer --

7 Q. Right.

8 A. -- about my business. Yeah.

9 Q. That is good and prudent practice, isn't it?

01:50:43 10 A. I think so, yeah.

11 Q. Right. And you have probably had other opportunities

12 in your business to hire attorneys for various things,

13 haven't you?

14 A. Have I hired attorneys? Not that I recall, no.

01:51:00 15 Q. Okay. So other than that attorney that you hired to

16 form the corporate documents, is that the only lawyer

17 other than Fisher & Phillips that you have ever hired?

18 A. Well, I was in court once before, but I did that pro

19 se with my wife. We didn't hire a lawyer.

01:51:29 20 Q. What kind of case was that, sir?

21 A. It was a disgruntled employee case.

22 Q. Did that employee sue your law firm -- I mean, excuse

23 me, your business?

24 A. No. They just -- they -- they were -- they requested

01:52:01 25 an arbitration before an arbitrator challenging their

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 wages, I believe.

2 Q. And you represented yourself and your company in that  
3 case?

4 A. Yes.

01:52:15

5 Q. All right. How did it turn out?

6 A. There was like \$400 or something that was disputed,  
7 and I paid it.

8 Q. As part of your business, are you required from time  
9 to time to review contracts?

01:52:34

10 A. Not that I'm aware of, no.

11 Q. Do you enter into contracts with logistics companies  
12 that you do subcontract work for?

13 A. I have a contract with DHL Express.

14 Q. All right. That particular contract, is that  
15 something you reviewed before you signed it?

01:52:53

16 A. Not really, no.

17 Q. You just signed it?

18 A. Yeah. It was a bunch of legal jargon that I didn't  
19 understand, so I signed it.

01:53:05

20 Q. All right. And in terms of the customers that you  
21 service as part of your business, do you ever have them  
22 sign contracts?

23 A. No.

24 Q. Okay. And let's go to -- now we are going to go to  
25 my white notebook, sir.

01:53:20

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Okay.

2 **Q.** And if you could turn to document -- or Exhibit 8.

3 Are you there, sir?

4 **A.** Yes, sir.

01:53:42

5 **Q.** And just flip through the pages and let me know if  
6 you recognize this document.

7 **A.** Yes, I recognize it.

8 **Q.** What is it?

9 **A.** It's a -- it's a letter from Alia --

01:54:13

10 **Q.** I'm sorry, sir. I don't think we're on the same  
11 page.

12 **A.** I am on 7. I'm sorry.

13 **Q.** Right.

14 **A.** You're on 8.

01:54:18

15 **Q.** Tab 8.

16 **A.** I am on Tab 8. Right. This is the client agreement  
17 with Veritas.

18 **Q.** All right. And we see at the top it is dated May  
19 5th, 2008?

01:54:29

20 **A.** Yeah.

21 **Q.** Do you know who prepared this document?

22 **A.** I am sure it was Marcia's attorney.

23 **Q.** Okay. And look at the last page, sir.

24 Is that your signature?

01:54:44

25 **A.** Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Dated May 5th, 2008?

2 A. Yes.

3 Q. Did you read this document before you signed it?

4 A. I probably read through it, yes.

01:54:57 5 Q. Do you think you understood it when you signed it?

6 A. Yes.

7 Q. All right. And just sort of -- in a layman's sort of  
8 overall big picture, what was this -- what were you hiring  
9 Veritas to do?

01:55:10 10 A. Well, I am real clear on what I hired her to do. I  
11 hired her to be the -- the employer of record, for the  
12 employees to be responsible to her, and for her to  
13 indemnify me from any lawsuits.

14 Q. And is that what this contract does?

01:55:34 15 A. Yes.

16 Q. By the way, we see at the top of the first page the  
17 client name is E & L Transfer, right, sir?

18 A. Yes.

01:55:40 19 Q. And so "client" in this document refers to your  
20 company?

21 A. Yes.

22 Q. Okay. So, let's drop down on that first page to  
23 paragraph 4.

24 Are you there?

01:55:46 25 A. Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. And it says, "Client." That's you, right?

2 A. Okay.

3 Q. E & L, right?

4 A. It says "Client or Clients."

01:55:55 5 Q. Right. But it is defined up there client is E & L  
6 Transfer, right?

7 A. Okay.

8 Q. Do you agree with me?

9 A. Are we on 4?

01:56:03 10 Q. Yes, sir.

11 A. Okay.

12 Q. So I just want to clarify when it says "Client," it's  
13 talking about E & L Transfer?

14 A. Okay.

01:56:10 15 Q. You agree with me?

16 A. Yes.

17 Q. All right. It says, "Client entrusts its president  
18 or the client's equivalent." Who is the president of  
19 E & L Transfer?

01:56:20 20 A. I am.

21 Q. All right. It says, "Entrusts its president with the  
22 authority to contract on its behalf," right?

23 Am I right so far?

24 A. "With the authority to contract" -- yes.

01:56:34 25 Q. "And to directly control the status of each temporary

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 employee."

2 **A.** Yes.

3 **Q.** Have I read that correctly so far?

4 **A.** Yeah.

01:56:43

5 **Q.** "Such that he shall retain and direct the services of  
6 each employee."

7 Have I read that correct so far?

8 **A.** That's what it says, yeah.

01:56:59

9 **Q.** "Including employee supervision, work schedules,  
10 workplace conditions, maintenance of employment records,  
11 and to remit payment for the services rendered."

12 Have I read that correctly so far?

13 **A.** Yes.

01:57:11

14 **Q.** So what this contract says, that's all your  
15 responsibility, right?

16 MR. BANES: Objection; calls for a legal  
17 conclusion.

18 THE COURT: Counsel, I can't hear you.

01:57:19

19 MR. BANES: Oh, sorry, Your Honor. Objection;  
20 calls for a legal conclusion.

21 MR. SCHEXNAYDER: I'm just asking for his  
22 understanding since he signed the document.

23 THE COURT: Phrase it that way.

24 MR. SCHEXNAYDER: All right.

01:57:27

25 BY MR. SCHEXNAYDER:

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. All right. Did you understand this provision as  
2 saying these duties and responsibilities were -- belonged  
3 to E & L Transfer when you signed it?

4 A. No.

01:57:35 5 Q. All right. But you read this before you signed it,  
6 didn't you?

7 A. Yeah. I didn't read it like that, though.

8 Q. Okay. How do you read it?

01:57:45 9 A. I read it that this is what she would -- this is what  
10 her responsibility is.

11 Q. Okay. I am taking it you didn't have an attorney  
12 review this particular contract before you signed it?

13 A. No, I did not.

01:58:06 14 Q. Okay. Let's move to the second page, sir, and  
15 subparagraph 12.

16 Are you there?

17 A. Yeah.

18 Q. All right. Again, I am going to read it.

01:58:13 19 "Client" -- and you agree with me that on  
20 the first page, client is E & L Transfer, right, sir?

21 A. Right.

01:58:28 22 Q. "Client accepts the obligation to discuss all matters  
23 concerning employees, including, without limitation,  
24 employees' job assignments, wages and payroll procedures  
25 with Veritas and not with employees directly."

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Did I read that correctly?

2 **A.** Yes.

3 **Q.** So, again, do you understand this means that E & L  
4 Transfer had those obligations?

01:58:38 5 **A.** I understood it to be that they have those rights.

6 **Q.** Well, it says, "Client accepts the obligation."

7 Do you see that, sir? The first four  
8 sentences -- first four words?

9 MR. BANES: Objection; argumentative.

01:58:52 10 THE COURT: Overruled.

11 **A.** It says, "Client accepts the obligations to discuss  
12 all matters concerning" --

13 BY MR. SCHEXNAYDER:

14 **Q.** That's right. And all I am saying is did you  
01:59:03 15 understand that to mean E & L Transfer had that  
16 obligation?

17 **A.** I thought this was a contract between me and Veritas,  
18 and what they were saying there is the client has an  
19 obligation to discuss it with her.

01:59:17 20 **Q.** Okay. But "client" meaning E & L Transfer?

21 **A.** Yes. It's a client agreement. It is a two-party  
22 agreement.

23 **Q.** Okay, sir.

24 MR. SCHEXNAYDER: And by the way, I guess this  
01:59:26 25 would probably be a good time for me to go ahead and

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 request to admit Exhibit 8 into evidence.

2 THE COURT: Any objection?

3 MR. BANES: No, Your Honor. It is already  
4 admitted, I think.

01:59:37

5 THE COURT: Plaintiff's -- I'm sorry. Defense  
6 8 is not in evidence. You have no objection to it now; is  
7 that correct?

8 MR. BANES: No, Your Honor. But it is the same  
9 as Exhibit 4.

01:59:48

10 THE COURT: Plaintiff's Exhibit 8 -- I'm sorry.  
11 Defense 8 is admitted in evidence without objection.

12 BY MR. SCHEXNAYDER:

13 Q. All right, sir. Could I refer you now to  
14 subparagraph 13?

01:59:59

15 A. Okay.

16 Q. It says, "Client" -- again E & L Transfer, right,  
17 sir?

18 A. Yeah.

19 Q. -- "shall indemnify and hold Veritas, its

02:00:10

20 subsidiaries, affiliates and agents, including the  
21 employer of record, harmless from any and all claims and  
22 damages arising out of client's violation of employment  
23 laws, including, without limitation, OSHA and EEO and  
24 immigration laws."

02:00:27

25 Did I read that correctly, sir?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** You did.

2 **Q.** So, is it your understanding that that provision  
3 actually requires E & L Transfer to indemnify Veritas?

4 **A.** This doesn't indemnify them from wages.

02:00:42 5 **Q.** Okay. But it does require an indemnification for  
6 these particular areas?

7 **A.** OSHA and equal opportunity, right. Yeah.

8 **Q.** Okay. So it would not be correct to characterize  
9 this document and this agreement as being solely one  
02:00:55 10 sided, that Veritas always indemnifies E & L. In fact,  
11 there were indemnity obligations that went the other way,  
12 from E & L to Veritas.

13 MR. BANES: Objection; compound.

14 THE COURT: Break it up, Counselor.

02:01:05 15 MR. SCHEXNAYDER: Okay.

16 BY MR. SCHEXNAYDER:

17 **Q.** Do you agree that there are obligations in this  
18 contract where E & L is the party that has to indemnify  
19 Veritas?

02:01:17 20 **A.** I would say yes to that.

21 **Q.** All right, sir.

22 And if we could go to page 4, and I am  
23 going to refer you to paragraphs 22, 23, 24, and 25.

24 Now, I think you were asked about  
02:01:39 25 paragraph 22 where it says, "Veritas agrees to indemnify

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 and defend client," et cetera, et cetera.

2 Do you recall that, sir?

3 **A.** Yes.

4 **Q.** All right. And the next paragraph, 23, also says,

02:01:51 5 "Veritas agrees to indemnify and defend client," et

6 cetera, right?

7 **A.** Yes.

8 **Q.** Okay. But 24 says, "Client agrees to indemnify and

9 defend Veritas," et cetera, doesn't it, sir?

02:02:03 10 **A.** It says with regards to client's breach of any of its  
11 obligations.

12 **Q.** Right.

13 **A.** I didn't breach anybody's obligations.

14 **Q.** I am not saying you did. I am saying this at least

02:02:27 15 has this language in it, that if that ever happened, you,  
16 E & L Transfer, would then have to indemnify Veritas.

17 **A.** Right.

18 **Q.** Agreed?

19 **A.** Yes.

02:02:39 20 **Q.** And 25 also has more language where client, E & L  
21 Transfer, has to agree and indemnify and defend Veritas  
22 for other types of claims.

23 Do you agree with that?

24 MR. BANES: Objection; vague.

02:03:00 25 THE COURT: Overruled.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 If you understood the question, you can  
2 answer.

3 THE WITNESS: Okay.

02:03:21

4 **A.** It looks like -- what this is, is it's saying that --  
5 this is Veritas employees. This looks like it is a  
6 result of the efforts or omissions of the Veritas  
7 employees.

8 **Q.** Right.

9 **A.** Right.

02:03:33

10 **Q.** So, you understood when you signed this document that  
11 there was some circumstances where Veritas might have to  
12 indemnify E & L, but there were other circumstances where  
13 it might be the opposite, right, sir?

14 **A.** Yes.

02:03:45

15 **Q.** Okay.

16 MR. SCHEXNAYDER: Your Honor, can I borrow that  
17 white flip chart over there?

18 THE COURT: Yes.

02:04:23

19 MR. SCHEXNAYDER: All right. We have been  
20 talking about a lot of dates, and I thought it might be  
21 helpful to try to just pin down a few of these. And I am  
22 going to start with a couple of dates that I am hoping the  
23 Court will take judicial notice of because these are  
24 pleadings in the Court's file.

02:04:35

25 The first date I want to ask the Court to

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 take judicial notice of is August 21, 2015, which was the  
2 date that Plaintiff, Matthew Walker, filed the first  
3 complaint in this case.

4 MR. BANES: No objection, Your Honor.

02:04:53

5 THE COURT: So noted.

6 MR. SCHEXNAYDER: All right. And rather than,  
7 again, try to introduce that particular document into  
8 evidence, I would ask the Court to take judicial notice  
9 that the only defendant in that pleading is E & L Transfer.

02:05:17

10 THE COURT: So noted.

11 MR. SCHEXNAYDER: The second pleading I would  
12 like the Court to take judicial notice of is on September  
13 9, 2015, Plaintiff in the Walker case filed a first amended  
14 complaint in the collective action naming Veritas as an  
15 additional defendant.

02:05:41

16 MR. BANES: No objection.

17 THE COURT: So noted.

18 BY MR. SCHEXNAYDER:

19 Q. Okay. Mr. Tweed, now I am going to refer you to one  
20 of the big black binders, three of four. Three of four.

02:06:07

21 Are you there?

22 A. Yes, sir.

23 Q. Okay. And ask you to turn to Plaintiff's Exhibit  
24 163.

02:06:42

25 Are you there, sir?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Yes.

2 **Q.** Could you flip through these documents, these two  
3 pages, and tell me if you recognize them?

4 **A.** I don't rec -- I don't recognize these documents, no.

02:07:36

5 **Q.** Okay. So let's just look at -- let's start with the  
6 second page. And let's make sure we're on the right  
7 document in the same notebook. The ones I have are FP6972  
8 at the bottom and FP6973?

9 **A.** Oh, no, I'm sorry. We're not.

02:07:51

10 **Q.** Okay. I thought that might be -- so I am on Exhibit  
11 163.

12 **A.** Okay. All right. So it looks like here September  
13 9th. Okay.

14 **Q.** Do you recognize these e-mails?

02:08:40

15 **A.** I don't see that I was ever included in these  
16 e-mails, no.

17 **Q.** Okay. If you look on the second page, sir --

18 **A.** Okay. Wesley to Marcia, "Marcia, we were served  
19 papers last night with a lawsuit by Matthew Walker. They  
20 are attached. Please follow up with Ed."

02:08:55

21 So, I see that Leslie received them, yeah.

22 **Q.** Who is Leslie?

23 **A.** Leslie is my wife.

24 **Q.** Okay. And do you see that she cc'd you?

02:09:07

25 **A.** Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Okay. So is it a fair statement, sir, that on  
2 September 5 either you or your wife Leslie were served  
3 with the Matthew Walker lawsuit?

02:09:20

4 MR. BANES: Objection; lack of foundation, Your  
5 Honor.

6 THE COURT: Just a moment.

7 MR. BANES: Ms. Tweed is not here.

8 THE WITNESS: Could you restate --

9 THE COURT: Just a moment.

02:09:28

10 THE WITNESS: I'm sorry.

11 THE COURT: Just -- I think the question was  
12 regarding the CC. I didn't hear his answer.

13 MR. SCHEXNAYDER: He acknowledged he was  
14 copied.

02:09:37

15 THE COURT: Ask again.

16 BY MR. SCHEXNAYDER:

17 Q. Were you copied on this e-mail dated September 5th,  
18 sir, 2015?

02:09:45

19 A. Yeah, I assume. That is my e-mail. I was copied,  
20 right.

21 THE COURT: All right. And your objection was  
22 lack of foundation?

23 MR. BANES: Well, my -- I don't think it's been  
24 asked if he actually received it. So --

02:09:55

25 THE COURT: Well, that objection is overruled.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 BY MR. SCHEXNAYDER:

2 Q. All right, sir. Does this refresh your recollection  
3 that on September 5th, 2015, you and/or your wife were  
4 served with the Matthew Walker lawsuit?

02:10:06

5 A. Yes, I would say that.

6 Q. Would it also be accurate to say, sir, that at that  
7 time the only party that had been sued was E & L Transfer?

8 A. That's what I was told by Alia.

02:10:38

9 Q. Well, you actually saw it yourself when you were  
10 served with the papers on September 5th, correct?

11 A. I was never served with the papers.

12 Q. It was your wife?

13 A. No. It shows you clearly here that they were served  
14 to my son.

02:10:47

15 Q. Okay. Who is your son?

16 A. Sean Tweed.

17 Q. Okay. Is he the agent of record?

18 A. Yeah.

02:11:05

19 Q. Okay. So, the agent of record for E & L, Tweed, was  
20 served with a lawsuit on September 5th?

21 A. That's what this says.

22 Q. And, in fact, your wife is the one notifying Marcia  
23 Radel on September 5th of this fact, correct?

24 A. That's what it appears.

02:11:16

25 Q. Okay. So based on what we just talked about with the

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Court that as of that date the only named defendant was  
2 E & L Transfer, you don't dispute that, do you?

3 **A.** No. That's what I was told.

02:11:32

4 **Q.** Okay. And you had every opportunity to review the  
5 lawsuit yourself, didn't you? I mean, your son got it.

6 **A.** My son was in Lubbock, I guess.

7 **Q.** Well, he could have faxed it to you. He could have  
8 e-mailed it to you.

9 MR. BANES: Objection; calls for speculation.

02:11:42

10 **A.** He could have done a lot of stuff.

11 THE COURT: Stop.

12 Overruled. This is cross.

13 And, Witness, make sure you listen to each  
14 question --

02:11:50

15 THE WITNESS: Uh-huh.

16 THE COURT: -- before you answer.

17 THE WITNESS: Uh-huh.

18 THE COURT: All right?

19 THE WITNESS: Yeah. Yes, sir. Go ahead.

02:11:54

20 BY MR. SCHEXNAYDER:

21 **Q.** That is my question.

22 Could he have communicated these papers to  
23 you, sent you copies through e-mail or fax?

02:12:07

24 **A.** He was a 24-year-old kid back then. He could have  
25 done a lot of things. There is times where I didn't see

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 him for months.

2 **Q.** Well, if you had picked up the phone and called your  
3 son and said, "Please send me these important legal  
4 documents," wouldn't he have done that?

02:12:19

5 **A.** Well, I would never have done that because they  
6 weren't important to me because I was indemnified by  
7 Veritas.

8 **Q.** Well, how did you know if you didn't even look at the  
9 lawsuit?

02:12:30

10 MR. SCHEXNAYDER: I'll fix that, Your Honor.

11 **A.** Because I didn't have any other clients.

12 BY MR. SCHEXNAYDER:

13 **Q.** Well, if you didn't even look at the lawsuit, sir,  
14 you didn't even know if it had anything to do with -- it  
15 could have been a slip and fall on your premises. How did  
16 you even know what it was about?

02:12:43

17 **A.** I didn't until Alia called me.

18 **Q.** So instead of looking at the papers yourself that  
19 were in the possession of your son, you didn't do anything  
20 until Alia called you?

02:12:57

21 **A.** I never -- I never --

22 **Q.** That is a yes or no, sir.

23 **A.** It's a -- okay. Ask the question one more time.

24 **Q.** You didn't do anything to familiarize yourself with  
25 the lawsuit that was served on your son until Alia Wynne

02:13:09

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 called you on September 16?

2 **A.** That's my understanding, yes.

3 **Q.** So eleven days later, because this was September 5  
4 and you didn't talk to her until September 16, you had no  
5 idea what this lawsuit was even about; is that correct?

6 **A.** Sounds correct to me. I never -- I never looked at  
7 any of these. I didn't even know Mason and Emerson and  
8 Bellard. I didn't even know who these people were. I had  
9 never read them. I never had anything to do with it.

10 Ozen, Mason --

11 **Q.** And -- and you had never met Alia Wynne at all, had  
12 you?

13 **A.** No.

14 **Q.** If she had called you out of the blue, you wouldn't  
15 have known who she was or where she lived?

16 **A.** Well, she -- what I -- what I understand is she  
17 identified herself as a lawyer for Fisher & Phillips, and  
18 she was calling on behalf of Marcia Radel at Veritas.

19 **Q.** Okay. And you said that in that phone call she was  
20 very harsh with you. She was intimidating. She left you  
21 feeling you had no choice?

22 **A.** Yes.

23 **Q.** And this is a woman you never met before and only  
24 talked to her one time on the telephone?

25 **A.** I still haven't met her.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Right. And based on that one phone call, you felt  
2 like you better just do what you were told?

3 A. Well, I figured she had been working with Marcia all  
4 this time. There had to be some reason that she was  
5 bringing this to my attention.

02:14:35

6 Q. Well, you talked to Marcia too, didn't you?

7 A. Not about me -- not about her not representing us.

8 Q. You never talked to Marcia about the Walker lawsuit  
9 and how it was going to all play out in terms of who was  
10 going to pay the legal fees?

02:14:50

11 A. Not until I heard from Alia.

12 MR. BANES: Objection, Your Honor. Can we kind  
13 of be specific as to time because that is important here?

14 THE COURT: That is your objection as to the --  
15 vague?

02:15:04

16 MR. BANES: Yes.

17 THE COURT: Sustained.

18 BY MR. SCHEXNAYDER:

19 Q. All right, sir. Well, this might help you. If you  
20 could flip to Exhibit 177 in that same notebook.

02:15:10

21 Are you there, sir?

22 A. Yes.

23 Q. All right. And it looks like there is a couple of  
24 e-mails here dated September 18, 2015.

02:15:35

25 Do you agree with that?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** That's September 18th there. That one is September  
2 18. Okay.

02:16:02

3 **Q.** All right. And the one on the first page is an  
4 e-mail from you to Marcia Radel, copy to Leslie, on  
5 Friday, September 18, 2015, and the subject is "Attorneys'  
6 Fees," right, sir?

7 **A.** Yes.

8 **Q.** All right. And you're the one who authored and sent  
9 this e-mail, right?

02:16:11

10 **A.** Yes.

11 **Q.** And what does it say?

02:16:30

12 **A.** It says, "Marcia, Leslie and I feel it makes sense to  
13 work, as discussed, together. We discussed we would spend  
14 \$7500 as a retainer to start with the fees, which we would  
15 be responsible for half. We also discussed responsibility  
16 for costs associated with findings after January 1st,  
17 2016."

18 **Q.** Signed Ed Tweed?

19 **A.** Yes.

02:16:41

20 **Q.** All right. So, the first sentence says, "Marcia" --  
21 so this is you to Marcia -- "Leslie and I feel it makes  
22 sense to work, as discussed, together," correct?

23 **A.** Right.

24 **Q.** Those are your words?

02:16:56

25 **A.** Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. And you're referring to a discussion that you had  
2 with Marcia Radel?

3 A. Well, I think I am -- I think I am referring to a  
4 discussion I had with Alia.

02:17:07 5 Q. Well, you didn't say "Alia." You said "we discussed  
6 together." And this is only to Marcia Radel.

7 A. Well, I guess I wouldn't typically copy an attorney  
8 and -- on these -- on these types of communications.

9 Q. But that is your testimony, sir, your sworn testimony  
02:17:24 10 under oath, that what you meant here was your discussion  
11 with Alia and not your discussion with Marcia directly?

12 A. I have got to tell you that I really don't have any  
13 idea.

14 Q. Well, that's -- okay. I'll take that.

02:17:36 15 But isn't it a reasonable interpretation  
16 that when you say "Leslie and I feel it makes sense to  
17 work, as discussed, together," you're talking about a  
18 discussion you had with Marcia?

19 A. Well, I don't think anything is reasonable after the  
02:17:53 20 way that I was treated by your firm. Everything was smoke  
21 and mirrors. Never -- never anything factual.

22 Q. So even though Alia Wynne had browbeat you on the  
23 phone call just a couple days before, you sent this e-mail  
24 saying, This makes sense; let's work together?

02:18:28 25 That is your testimony?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** You know, I am not -- just because somebody with the  
2 title of an attorney decides to attack me, I am not going  
3 to change my whole disposition. I am going to be  
4 courteous and respectful.

02:18:41

5 **Q.** Well, you also knew you could just say no --

6 **A.** But --

7 **Q.** -- didn't you, Mr. Tweed?

8 **A.** Well, I sure do now know that had I said no, I would  
9 never have been on the hook for half a million dollars.

02:18:55

10 **Q.** Really? You know that? If you had just said no, you  
11 know for a fact that Marcia Radel would have agreed to  
12 indemnify you 100 percent just because you said no?

13 Is that your testimony?

14 **A.** Yes.

02:19:08

15 **Q.** Did she tell you that?

16 **A.** I had a contract to tell her to do that.

17 **Q.** Well, we looked at that contract, sir, and didn't  
18 that contract have an indemnification going both ways?

19 **A.** Well, I don't think it had anything to do with the  
20 fair labor laws that she set up.

02:19:20

21 **Q.** So you are saying if you had simply said no to  
22 Marcia, just no, that Marcia would have rolled over and  
23 paid 100 percent of all the costs in this lawsuit?

24 That is your testimony?

02:19:30

25 **A.** My testimony is that Marcia decided to try to get out

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 of this because she was going -- she was going to plead  
2 bankruptcy because she saw that it became a class action.  
3 And in the interim, she was being paid by ADP for all of  
4 your legal fees without my knowledge.

02:19:49

5 Q. Sir --

6 MR. SCHEXNAYDER: I object as nonresponsive.

7 THE COURT: Overruled.

8 BY MR. SCHEXNAYDER:

02:19:57

9 Q. I just want to know if you're 100 percent confident  
10 that Marcia Radel, if you had just said no, would have  
11 done all that.

02:20:13

12 A. If I would have got -- yeah, if I would have  
13 properly -- if I would have -- my answer is this: If I  
14 would have simply said no and gotten a firm that wasn't  
15 working behind my back, they -- they would have handled  
16 this properly.

17 Q. So you understand that it might have required you to  
18 go hire another law firm?

19 A. I do now.

02:20:24

20 Q. Well, even back then, if you had said no to Marcia,  
21 you understand there is a chance that she was going to  
22 fight you on that issue and you might have had to hire a  
23 law firm?

02:20:36

24 A. Well, the double dealing came out afterwards when I  
25 found out that you were -- your client, ADP, was paying

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 your services --

2 MR. SCHEXNAYDER: Object as nonresponsive.

3 **A.** -- and her services.

4 THE COURT: That's sustained. But allow him to

02:20:46 5 finish his answer before you object. Your next question.

6 BY MR. SCHEXNAYDER:

7 **Q.** All right, sir. So, if Fisher & Phillips' position  
8 is that this apportionment where you and Marcia agreed to  
9 split the fees 50/50 was something you agreed with Marcia

02:21:05 10 directly about, that is just wrong?

11 **A.** I don't -- I don't understand your question at all.

12 **Q.** Well, I want to make sure that your -- are you  
13 denying that it was your agreement directly with Marcia  
14 Radel to split the legal fees 50/50?

02:21:25 15 **A.** I agreed with her after -- after I was told what  
16 my -- that Marcia wasn't being sued --

17 **Q.** All right.

18 **A.** -- by Alia.

19 **Q.** If you could go back to my white notebook, sir, and  
02:21:46 20 turn to Exhibit 1.

21 Are you there?

22 **A.** Yes.

23 **Q.** All right. If you could just flip through these two  
24 pages and tell me if you recognize these e-mails.

02:22:06 25 **A.** Yes, I remember these.

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Okay. And the first e-mail, which would be really on  
2 the second page, is from you to Ms. Wynne on September 17,  
3 correct?

4 A. That's what it says. Right.

02:22:43

5 Q. And it actually says it's Leslie Tweed's mail  
6 account. But it is also signed by you, so I just want to  
7 clarify you're the one who sent this e-mail.

8 A. Okay.

9 Q. Is that correct?

02:22:56

10 A. Yes.

11 Q. Okay. And on September 17 -- so this is the day  
12 after the phone call with Alia, right?

13 A. Right.

14 Q. -- you say, "Thanks for the quick chat yesterday  
15 discussing your fees," right?

02:23:07

16 A. Yes.

17 Q. This quick chat is the one where she browbeat you and  
18 told you you had no choice, right?

19 A. Yeah. If you look right here on -- if you look on  
20 Thursday, September 2015, she says right here that -- that  
21 I did, of course, disagree.

02:23:19

22 Q. Well, let's just -- I am clarifying this quick chat,  
23 that you referred to it as "quick chat." That's the one  
24 where she browbeat you?

02:23:36

25 A. That's correct.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Okay. And you tell her, "Our intentions were to have  
2 you draft a document, correctly identifying the employer  
3 of Matt Walker as HireGround/Veritas," correct?

4 A. Yes.

02:23:50

5 Q. And then Alia sends back a response same day, copying  
6 Marcia Radel and Mr. Ropollo and somebody else, and it  
7 says, "Ed, based on your e-mail below, it appears that you  
8 intend to take a position that is adverse to Veritas,"  
9 correct, sir?

02:24:08

10 A. Yes.

11 Q. And it says, "If that is the case, I cannot provide  
12 you with legal advice or services or represent you in any  
13 manner because it would present a conflict of interest,"  
14 correct?

02:24:18

15 A. Correct.

16 Q. "If you and Veritas can agree to apportion legal fees  
17 and potential damages among yourselves, we may be able to  
18 jointly represent you, E & L and Veritas," correct?

19 A. Correct.

02:24:31

20 Q. "However, if we were to jointly represent all the  
21 defendants, we would need to have a formal agreement  
22 signed by each, that specifies each parties' obligations  
23 and that confirms they understand that a potential  
24 conflict of interest exists," correct?

02:24:46

25 A. Correct.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. I'm sorry?

2 A. I -- I wasn't following you there. It says because  
3 of what?

02:24:57

4 Q. The last sentence in the first paragraph, "However,  
5 if we" -- and I just want you to confirm I am reading this  
6 correctly. "However, if we were to jointly represent all  
7 the defendants, we would need to have a formal agreement  
8 signed by each, that specifies each parties' obligations  
9 and that confirms they understand that a potential

02:25:12

10 conflict of interest exists."

11 THE COURT: Do you have an objection, Counsel?  
12 You're standing.

13 MR. BANES: No, Your Honor. I am just looking.  
14 I'm just trying to find something.

02:25:18

15 THE COURT: Okay.

16 BY MR. SCHEXNAYDER:

17 Q. Did I read that correctly, sir?

18 A. Yes.

19 Q. Okay.

02:25:22

20 MR. SCHEXNAYDER: And I will ask to admit  
21 Exhibit 1, Your Honor.

22 THE COURT: Plaintiff's 1? Defense 1?

23 MR. SCHEXNAYDER: Defense 1.

24 THE COURT: Any objection?

02:25:30

25 MR. BANES: No objection, Your Honor.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 THE COURT: Defense 1 is admitted without  
2 objection.

3 MR. BANES: Your Honor, are they also going to  
4 admit 177?

02:25:40

5 THE COURT: He has offered his exhibit.

6 MR. BANES: All right.

7 BY MR. SCHEXNAYDER:

8 Q. All right. Mr. Tweed, now let's look at the second  
9 paragraph in this e-mail:

02:25:47

10 "Because I represent Veritas and you may  
11 be adverse to Veritas in this litigation, I cannot advise  
12 you as to whether you should agree to joint  
13 representation."

14 Do you see that, sir?

02:25:56

15 A. Yes.

16 Q. That would be directly conflicting what she told you  
17 the day before, where she said you better agree to this  
18 deal or else.

19 A. Well, the day before she said that I was the only one  
20 being sued.

02:26:08

21 Q. Right. But you also said she told you you better go  
22 ahead and agree to this.

23 A. Right.

24 Q. Right. But here she is telling you she cannot advise  
25 you.

02:26:17

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 So you are saying she is just reversing  
2 herself the next day?

3 **A.** I think the day before she was looking for a quick  
4 check.

02:26:23

5 **Q.** That is not my question.

6 I am saying does this sound consistent  
7 with what she told you on the phone that -- the day  
8 before, "I cannot advise you as to whether you should  
9 agree"?

02:26:34

10 **A.** No. It's totally different than what she told me the  
11 day before.

12 **Q.** Okay. And the next sentence says, "I highly  
13 encourage you to consult with an attorney of your choice  
14 regarding this decision, and I will be happy to speak with  
15 your attorney if that would be helpful," correct, sir?

02:26:46

16 **A.** That's what it says, right.

17 **Q.** Did you do that?

18 **A.** No.

19 **Q.** All right. Sir, could you turn to Exhibit 3,  
20 Defendant's Exhibit 3?

02:27:01

21 Do you recognize this document?

22 **A.** Yes, I recognize it.

23 **Q.** And what is it?

24 **A.** This is the -- it looks to me like it's the  
25 engagement letter where we became -- we started to work

02:27:45

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 with Fisher & Phillips.

2 **Q.** Okay. And, in fact, what Ms. Wynne is forwarding to  
3 you with this document is not only the engagement letter  
4 but what we have been calling the conflict waiver.

02:28:09

5 Do you agree with that?

6 **A.** Yes.

7 **Q.** All right. And what does she say in the paragraph  
8 after subpoint 2?

02:28:35

9 **A.** She says, "E & L's response to the complaint was due  
10 on October 26th."

11 **Q.** I'm sorry. I meant to go up one paragraph. Please  
12 read that part.

02:28:47

13 **A.** "Please read these very carefully. Before signing I  
14 strongly recommend that you have your own attorney review  
15 the agreement regarding the apportionment of fees and  
16 damages and potential conflicts, that you discuss with  
17 your attorney any questions you have regarding the  
18 agreement."

19 **Q.** Did you do that?

02:28:57

20 **A.** I didn't have an attorney.

21 **Q.** Did you seek one out?

22 **A.** No. She told me I didn't need one, that she had  
23 already done all this research and she had all this case  
24 history, that I didn't need another attorney.

02:29:08

25 **Q.** Well, sir, that is not what she is saying in this

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 e-mail, is it?

2 **A.** That's not what I interpreted it to be. I figured  
3 this was a form letter.

02:29:18

4 **Q.** Okay. But the point is, whatever it said in this  
5 e-mail, that is not what you did. You didn't go out and  
6 have a separate attorney review this.

7 **A.** Absolutely not. I didn't have any attorneys in the  
8 State of Texas.

02:29:47

9 **Q.** All right, sir. And did you review -- at least do  
10 what she said in the first sentence, "Please read these  
11 very carefully before signing"? Did you do that part?

12 **A.** Probably not.

13 **Q.** Why not?

02:30:01

14 **A.** Because, as I have told you several times, your firm  
15 had already been representing me. The only thing you  
16 hadn't been doing is charging me. So all I understood was  
17 that I was a new payer to this process for the other four  
18 or five cases that you had already represented us for and  
19 this was just a continuation of the same case. And the  
20 only clarification was that it wasn't only E & L Transfer  
21 that was being named, but it was now Veritas who was  
22 correctly identified as the employer.

02:30:20

23 **Q.** All right, sir. So it is your position that all the  
24 prior cases, E & L Transfer is the party that had been  
25 sued?

02:30:40

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** I -- I believe that we were party to all of them and  
2 you -- you were representing us with -- along with Marcia;  
3 that is correct.

02:30:54

4 **Q.** So it might surprise you to know that in the Ozen  
5 case E & L Transfer was, in fact, not named as a party?

6 That would surprise you?

7 **A.** No. It wouldn't surprise me at all.

8 **Q.** Okay. Or in Emerson that, in fact, the only party  
9 sued was Veritas, would that surprise you?

02:31:06

10 **A.** No. It wouldn't.

11 **Q.** And in the Bellard case, would it surprise you to  
12 know that the only party sued was Veritas?

13 **A.** No. It wouldn't surprise me.

02:31:18

14 **Q.** Okay. And you said that this is the only case where  
15 both defendants -- both parties, E & L and Veritas, were  
16 sued together? Is that correct or not?

17 **A.** That's not correct, no.

18 **Q.** Okay. What other case were they sued together?

02:31:34

19 **A.** I don't -- I don't know if they were ever sued  
20 together.

21 **Q.** All right. All right. So, let's now turn to Defense  
22 Exhibit 2, sir.

02:31:55

23 And this has been talked about in the  
24 plaintiff's set of exhibits. Do you recognize this as  
25 that conflict waiver that we have been talking about?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Yes.

2 MR. SCHEXNAYDER: I move to admit defense  
3 Exhibit 2, Your Honor.

4 THE COURT: Any objection?

02:32:04

5 MR. BANES: No objection, Your Honor.

6 THE COURT: Defense 2 is admitted without  
7 objection.

8 BY MR. SCHEXNAYDER:

02:32:12

9 **Q.** Okay. Mr. Tweed, I think you just testified you  
10 probably didn't read this carefully. So, does this --  
11 does this refresh your recollection whether you read it  
12 carefully or not?

13 **A.** I still haven't read it clearly.

14 **Q.** All right. Even today?

02:32:24

15 **A.** No.

16 **Q.** All right. So I want to find out what you disagree  
17 with in this letter. Okay? Let's look at the first  
18 sentence.

02:32:36

19 "As you know, Fisher & Phillips has been  
20 asked to represent Edward J. Tweed and E & L Transfer and  
21 Veritas Personnel Services, collectively the defendants,  
22 in connection with the collective action lawsuit cited  
23 above that was filed by Matthew Walker on behalf of  
24 himself and other similarly situated employees."

02:32:54

25 So that part of it, anything you disagree

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 with in that statement?

2 **A.** No.

3 **Q.** Next sentence, "Mr. Walker is alleging that he and  
4 other employees were denied overtime compensation in  
5 violation of the Fair Labor Standards Act of 1939 and has  
6 named Tweed, E & L and Veritas as defendants."

7 Anything you disagree with there?

8 **A.** No.

9 **Q.** So certainly by this time, you were made aware  
10 directly that both Veritas and E & L were defendants.

11 **A.** At this time, yeah.

12 **Q.** Right. That information was not withheld from you at  
13 this time, was it?

14 **A.** No.

15 **Q.** All right. Let me read the next sentence.

16 "When an attorney represents more than one  
17 party in the same matter, conflicts of interest may  
18 arise."

19 Did that statement seem confusing or  
20 puzzling to you?

21 **A.** No.

22 **Q.** All right. "The State Bar of Texas Rules of  
23 Professional Conduct require us to inform you of any  
24 potential conflicts of interest that may arise in this  
25 matter and obtain written consent before we proceed with

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EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 our joint representation of Tweed, E & L and Veritas."

2 Do you understand that statement?

3 **A.** And I understand that's where the conflict came from  
4 because I wasn't advised of any of that.

02:34:09

5 **Q.** Well, isn't this letter advising you of it?

6 **A.** No. It wasn't advising me what you were doing to  
7 better position me with the case.

8 **Q.** Okay. The next sentence says, "The purpose of this  
9 letter is to satisfy these requirements."

02:34:22

10 So I guess you're saying this letter  
11 doesn't satisfy those requirements?

12 **A.** No, it doesn't. I would say it doesn't satisfy any  
13 requirements.

02:34:33

14 **Q.** Even though as you sit here today, you still haven't  
15 read this letter thoroughly.

16 Is that your testimony?

17 **A.** No. I'm just testifying that I am saying that  
18 everything that was done before I was brought into your  
19 firm I was never notified of. I had no facts.

02:34:51

20 **Q.** Okay. The next sentence says, "The letter will also  
21 memorialize the agreement between Tweed, E & L and Veritas  
22 regarding the apportionment of legal costs and damages  
23 related to the lawsuit which will be essential to this  
24 firm's ability to jointly represent the defendants."

02:35:05

25 Did you understand what that was referring

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 to?

2 **A.** I took it as meaning that you needed additional fees  
3 to help continue to defend Veritas. So you were bringing  
4 me in as new money.

02:35:24

5 **Q.** All right. You didn't understand what they meant by  
6 apportionment of legal costs meaning you would pay half  
7 and Veritas would pay half?

8 **A.** Not really, no.

02:35:40

9 **Q.** Next sentence says, "We strongly recommend you  
10 consult with an attorney of your choice regarding your  
11 decision to enter into this agreement," right, sir?

12 **A.** Yes.

13 **Q.** And you didn't do that?

14 **A.** That's correct. I did not.

02:35:49

15 **Q.** So you have been told on three separate occasions, in  
16 two e-mails that we have written up here and now in this  
17 letter, that they recommend you consult an attorney before  
18 signing it, and three times you have decided not to do  
19 that?

02:36:04

20 **A.** That's correct.

21 **Q.** The next paragraph says, "This letter is divided into  
22 four parts. The first part memorializes the agreement  
23 between defendants to share responsibility for legal fees  
24 and damages."

02:36:17

25 Did you understand what that meant?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Yes.

2 **Q.** The second part discusses "any and all potential  
3 conflicts of interest that we perceive at this time."

4 Did you understand what that meant?

02:36:33

5 **A.** Yeah. But that wasn't done. That is what my issue  
6 is.

7 **Q.** Okay. The third part discusses what will happen if  
8 one of these potential conflicts becomes an actual  
9 conflict.

02:36:42

10 Did you understand that?

11 **A.** Yes.

12 **Q.** Finally, the fourth part discusses the advantages of  
13 joint representation and requests your consent to our  
14 representation of Tweed, E & L Transfer, and Veritas  
15 Personnel Services.

02:36:56

16 You understood that, didn't you, sir?

17 **A.** Yes.

18 **Q.** You understood that until you signed this letter,  
19 there was going to be no representation by Fisher &  
20 Phillips, correct?

02:37:03

21 **A.** I would ask if you would repeat that.

22 **Q.** You understood that it was a requirement for Fisher &  
23 Phillips to start representing E & L that you sign this  
24 document first?

02:37:42

25 **A.** Yes.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Okay. So the big heading here, subsection 1,  
2 "Apportionment of Fees and Damages Related to the  
3 Lawsuit," first paragraph, "Tweed and E & L will be  
4 responsible for payment of one half of this firm's monthly  
5 invoices and Veritas will be responsible for the other  
6 half," was that a correct summary of the agreement?

7 A. Yes.

8 Q. And that's an agreement you reached with Marcia Radel  
9 directly, correct?

10 A. This is what I was told from Alia that I needed to do  
11 to enter into the agreement.

12 Q. I understand. But you are saying you never talked to  
13 Marcia independently about that?

14 A. No. The letter I read was that you were bringing --  
15 you would bring me into the case. My fee would be more  
16 than hers because she had -- she had already given you  
17 about a \$25,000 retainer. So, I -- I would get a break  
18 on -- if I signed it, I would get a break of -- for -- for  
19 reducing that fee to \$15,000 so that I would only have to  
20 pay legal fees of \$7500, which would be much less than  
21 going out and hiring a new attorney.

22 Q. Did you ever discuss with Marcia Radel directly, just  
23 you and her, on the phone or otherwise, the concept of  
24 splitting the fees 50/50?

25 A. Not that I recall, no.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. Let's go to the next paragraph.

2 "With respect to any damages awarded by  
3 the Court or paid as part of a settlement agreement to any  
4 plaintiff in the lawsuit who worked for E & L or Tweed,  
5 Veritas will be responsible for any back wages in  
6 associated liquidated damages earned prior to January 1,  
7 2015."

8 Next sentence, "Tweed and E & L will be  
9 responsible for back wages and associated liquidated  
10 damages earned after January 1, 2015."

11 Stopping there, sir, is that the  
12 agreement, as you understood it, with Marcia Radel?

13 MR. BANES: Objection; lack of foundation.  
14 Excuse me. Objection, Your Honor; lack of foundation.

15 THE COURT: Counsel?

16 MR. SCHEXNAYDER: Let me rephrase that, Your  
17 Honor.

18 THE COURT: Very well.

19 BY MR. SCHEXNAYDER:

20 Q. Did you have an agreement with Ms. Radel as it has  
21 been described in these first two sentences?

22 A. I have no recollection of that, no, of any of those  
23 dates being accurate.

24 Q. All right. So, do you know where these dates came  
25 from, why they were chosen?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Probably Marcia and Alia worked it up.

2 **Q.** Okay. Ultimately, you signed this agreement, right,  
3 sir?

4 **A.** Yeah.

02:40:31

5 **Q.** And are you saying now that you did not agree to this  
6 apportionment of liability?

7 **A.** I am saying that probably I didn't pay any attention  
8 to the dates.

02:40:49

9 **Q.** It is fair to say that you didn't rely in any way on  
10 this written document when you decided to hire Fisher &  
11 Phillips, isn't it?

12 MR. BANES: Objection; calls for a legal  
13 conclusion, lack of foundation.

14 THE COURT: Rephrase it.

02:40:58

15 MR. SCHEXNAYDER: Well, actually, I think I  
16 need to ask the question in that form, Your Honor. I'll  
17 just -- I'll just repeat it, and you can let me know if it  
18 is sustained.

19 BY MR. SCHEXNAYDER:

02:41:07

20 **Q.** But did -- is it safe to say that you didn't rely on  
21 this written document when you decided to hire Fisher &  
22 Phillips?

23 MR. BANES: Same objection, Your Honor.

24 THE COURT: It's overruled. And I take it you

02:41:28

25 rely separate from -- I think your objection goes to

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 reliance --

2 MR. BANES: Yes.

3 THE COURT: -- is your objection, I understand.

4 So, your objection is overruled.

02:41:42

5 You can answer.

6 **A.** You are going to have to repeat the question. That  
7 was too long ago for me.

8 BY MR. SCHEXNAYDER:

9 **Q.** I hope I get it right the second time.

02:41:50

10 **A.** All right.

11 **Q.** Is it safe to say you did not rely on this written  
12 document in deciding to hire Fisher & Phillips?

13 MR. BANES: Same objection, Your Honor.

14 THE COURT: Overruled.

02:42:04

15 **A.** I relied on the advice that I was given, Alia, that I  
16 had a short window of time to get prepared to -- to answer  
17 this complaint. Otherwise, I -- I was going to be held  
18 wholly responsible for the lawsuit.

19 BY MR. SCHEXNAYDER:

02:42:24

20 **Q.** Okay.

21 **A.** So anything other than that was better than what  
22 alternative she had given me.

23 **Q.** But this particular written document, you didn't rely  
24 on anything in that, did you?

02:42:34

25 **A.** No.

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. So I am gathering -- so that maybe I can just sort of  
2 speed through the rest of this, in Subsection 2 where it  
3 says "Potential Conflicts" and it has a sub heading A,  
4 "Potential Conflict Number 1," you don't recall actually  
5 reading that in any detail?

02:42:59

6 A. No. I don't recall that.

7 Q. Subpoint B, Potential Conflict Number 2, you don't  
8 recall reading that in any detail?

9 A. No.

02:43:12

10 Q. Subpoint C, Potential Conflict Number 3, you don't  
11 recall reading that in any detail?

12 A. No.

13 Q. Subpoint D, Potential Conflict Number 4, you didn't  
14 recall reading that in any detail?

02:43:23

15 A. No.

16 Q. Subpoint E, Potential Conflict Number 5, you don't  
17 recall reading that in any detail?

18 A. No.

19 Q. Subsection 2 on the last -- second to the last page,  
20 page 4, "The consequences of one or more potential  
21 conflicts becomes an actual conflict and agreement that  
22 Fisher & Phillips can continue to represent Veritas  
23 Personnel Services if an actual conflict arises," is it  
24 safe to say you didn't read that section with any detail?

02:43:40

25 A. It is safe to say that, yes.

02:43:56

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 Q. And Subsection 3, "Advantages of Joint  
2 Representation," did you read that section?

3 A. Probably not.

4 Q. And the last page, sir, is that your signature?

02:44:15

5 A. Yes, it is.

6 Q. And the date is October 5th, 2015?

7 A. That's correct.

8 Q. So the date on this letter is September 28, right?

9 A. Uh-huh.

02:44:27

10 Q. The date at the beginning of the letter?

11 A. Right.

12 Q. And we saw an e-mail transmitting that to you on  
13 September 29, right? Do you remember going over that  
14 e-mail?

02:44:38

15 A. Right.

16 Q. And you didn't sign this document until October 5; is  
17 that correct?

18 A. Right.

19 Q. So it is fair to say you spent at least five or six  
20 days thinking about this before you signed it?

02:44:46

21 A. Oh, I would think that's probably not even close to  
22 the truth.

23 Q. So you didn't think about it before you signed it,  
24 but you did wait five or six days before you signed it; is  
25 that correct?

02:45:02

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** I would have to look at a calendar. Was it a  
2 weekend? I mean, you know, I guess -- I do things of what  
3 is important to me at the moment at the moment. I don't  
4 go searching around looking for legal jargon.

02:45:17

5 **Q.** Well, we know you didn't sign it before October 5th.  
6 Is that a fair statement?

7 **A.** Sure.

8 **Q.** All right. If you could turn to Exhibit 5, sir,  
9 Defense Exhibit 5.

02:45:49

10 Are you there?

11 **A.** Yes.

12 **Q.** Do you recognize this document?

13 **A.** Yes.

14 **Q.** What is it?

02:45:55

15 **A.** Looks like it's an e-mail from me to Alia.

16 **Q.** Dated?

17 **A.** Dated October 1st.

18 **Q.** All right. October 1st. And are you responding to  
19 the e-mail she sent you on September 29?

02:46:12

20 **A.** It says, "Subject: Walker and E & L Privileged and  
21 Confidential."

22 **Q.** Right. But if you look down at the e-mail below  
23 it --

24 **A.** Oh, okay.

02:46:25

25 **Q.** -- is that the September 29 e-mail?

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Yes.

2 **Q.** All right.

3 **A.** It sure looks like it.

4 **Q.** Is that a correct statement I said, that you're  
5 responding to the September 29 e-mail on October 1?

6 **A.** Yeah, it looks like it. I mean, I would have no way  
7 of knowing that because it doesn't -- I mean, it is just  
8 pasted on there.

9 **Q.** Well, let's look at the e-mail you actually sent.

10 It says, "Alia, the only issue I see is,  
11 should there be damages, Marcia and I agreed that E & L  
12 and I would be responsible for 50 percent of the damages  
13 after January 1, 2015," right?

14 **A.** Yes.

15 **Q.** I read that correctly?

16 **A.** Yes.

17 **Q.** So you're saying -- you're referring Alia to an  
18 agreement you had directly with Marcia, aren't you?

19 **A.** This is in October.

20 **Q.** Right. A few days --

21 **A.** This is after -- this is after the call from Alia.

22 **Q.** I understand it is after she sent you the proposed  
23 conflict waiver, right?

24 **A.** Right.

25 **Q.** And, in fact, that is what you're responding to.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1                   You're saying, "The only issue I see,  
2   should there be damages, Marcia and I agreed that E & L  
3   and I would be responsible for 50 percent of the damages  
4   after January 1, 2015," right?

02:48:13

5   **A.**   Right.

6   **Q.**   So, is it a fair characterization that you read the  
7   conflict waiver. You saw that it didn't say that in your  
8   writing back to Alia to make sure that she changes it to  
9   what you understood the deal to be?

02:48:30

10   **A.**   Yeah. It's -- yeah, it's an e-mail.

11   **Q.**   Right. And so, you and Marcia did have an agreement,  
12   didn't you? You're referring to it right here, "Marcia  
13   and I agreed."

02:48:51

14   **A.**   Marcia and I agreed that -- that we would -- that  
15   she -- that there basically weren't -- there is not going  
16   to be any damages because she was going to correct her bad  
17   information and make it right.

18   **Q.**   That is not what you say in this e-mail, is it, sir?

02:49:07

19   **A.**   Well, this e-mail really wasn't for Alia. I mean, it  
20   has nothing to do with what Marcia says.

21   **Q.**   You say it is not for Alia? It's addressed to Alia  
22   and you say, "Alia" comma?

23   **A.**   Yeah. I am saying that this e-mail is a response to  
24   the letter. But, yeah, okay.

02:49:21

25   **Q.**   And you're talking about an agreement you had

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 directly with Marcia, aren't you?

2 **A.** Yes.

3 **Q.** All right. And the date you use in this e-mail is  
4 January 1, 2015, right?

02:49:32

5 **A.** That's the date that's in the e-mail, right.

6 **Q.** Right. Because that's the deal you had with Marcia.

7 **A.** Well, I don't know if that's the deal I had with  
8 Marcia or these dates are correct. I mean, they are  
9 dates.

02:49:47

10 **Q.** Well, that's what you put in the e-mail. That is all  
11 I am asking.

12 **A.** Yeah. That's what -- I can answer yes, that that's  
13 what I put in the e-mail.

14 **Q.** I mean, you had your own responsibility to be honest  
15 with Alia, didn't you?

02:49:58

16 **A.** Of course.

17 **Q.** I mean, you know that she had a duty to be honest  
18 with you; but you had the same duty back to her, didn't  
19 you?

02:50:07

20 **A.** Yes.

21 **Q.** You wouldn't send her an e-mail that was incorrect or  
22 dishonest, would you?

23 **A.** I don't think there is anything dishonest about it,  
24 no.

02:50:15

25 **Q.** Okay. And she was entitled to rely on that e-mail,

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 wasn't she?

2 **A.** Yes.

3 **Q.** I'm just going to put this on the timeline here,

4 October 1 is when you respond. And we know from looking

02:50:42 5 at the conflict waiver that you signed it on October 5th,  
6 right?

7 **A.** Right.

8 MR. SCHEXNAYDER: I'm not sure if I asked for  
9 Exhibit 6 to be admitted so I am asking at this time,

02:51:10 10 please. I'm sorry. That was Exhibit 5, Defense Exhibit  
11 5.

12 THE COURT: Any objection?

13 MR. BANES: No objection, Your Honor.

14 THE COURT: Defense 5 is admitted without  
02:51:16 15 objection.

16 BY MR. SCHEXNAYDER:

17 **Q.** Now, could you turn to Defense Exhibit 6, sir?

18 Does this e-mail look familiar to you?

19 And it looks like a series of e-mails, so, if you could

02:51:41 20 just look through all of them first.

21 **A.** Okay.

22 **Q.** Let's start with the last page, and I guess that

23 would be the first e-mail in the chain. It's from Marcia

24 Radel to Alia Wynne, copy to Ed Tweed, dated Thursday

02:52:49 25 October 1, 2015. It says, "Alia, Ed and I just spoke, and

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 we are both in agreement to item 1, page 2, apportionment  
2 of fees and damages related to the lawsuit of the conflict  
3 agreement."

4 Do you recall seeing that e-mail?

02:53:04 5 **A.** What's -- do I -- do I remember? No, of course I  
6 don't remember. But it -- it's sent, so...

7 **Q.** Right. You don't dispute, do you, that you and  
8 Marcia spoke on October 1?

9 **A.** Well, I hadn't even -- I hadn't even signed the  
02:53:32 10 conflict waiver.

11 **Q.** I understand. I'm just asking -- and she is saying  
12 she just spoke to you. I am asking, do you think that is  
13 right or wrong?

14 **A.** I'm trying to figure out how I -- how I signed a  
02:54:08 15 conflict agreement on October 5th and this e-mail is  
16 October 2nd that said I mailed the signed agreements and  
17 check today to your attention.

18 **Q.** Yeah. And we are going to get to that one next.

19 **A.** Okay.

02:54:20 20 **Q.** But before we get to that one, I want to go with the  
21 first e-mail in the chain from Marcia where she says, "Ed  
22 and I just spoke."

23 You don't deny that, do you?

24 **A.** I don't deny that we spoke.

02:54:35 25 **Q.** Okay. And do you deny that -- what she says, "We are

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 both in agreement to item 1, page 2, apportionment of fees  
2 and damages"?

3 **A.** Page 2 is from Leslie to Alia.

4 **Q.** No. I am referring to the same e-mail, very last  
02:55:03 5 page.

6 **A.** Oh, I'm sorry.

7 **Q.** Yeah. I am still referring to what Marcia wrote in  
8 her e-mail. Okay?

9 **A.** It says, "Alia, Ed and I just spoke, and we are both  
02:55:13 10 in agreement to item 1, page 2, apportionment of fees and  
11 damages related to the lawsuit."

12 **Q.** You don't dispute that you spoke to her on October 1,  
13 do you?

14 **A.** I would have no idea.

02:55:26 15 **Q.** Right. And you don't dispute that you were both in  
16 agreement with that on October 1?

17 **A.** I don't dispute it.

18 **Q.** Okay. And there is some subsequent e-mails about you  
19 mailing back the agreement, and I think if you'll see,  
02:55:43 20 there is -- if you look at the second page of this chain  
21 of e-mails on October 5th, Leslie is e-mailing Alia.

22 You there?

23 **A.** Yeah.

24 **Q.** And she says, "Page 2 and 4 of the letter is  
02:56:01 25 missing." She says, "Can you resend with all pages and

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 then Ed can sign it"?

2 **A.** Right.

3 **Q.** Do you see that?

4 **A.** Yeah.

02:56:08 5 **Q.** So that is more in line with what we have seen now.

6 October 5th, that is when you, in fact, did sign it?

7 **A.** Right.

8 **Q.** Okay. And then we see the very final e-mail on the

9 first page of this exhibit, October 6, Leslie is e-mailing

02:56:27 10 to Alia Wynne saying "Sign the conflict letter attached,"  
11 right?

12 **A.** Yes.

13 **Q.** Okay.

14 MR. SCHEXNAYDER: Your Honor, I would like to

02:56:35 15 move to admit Exhibit -- Defense Exhibit 6.

16 MR. BANES: No objection, Your Honor.

17 THE COURT: Defense 6 is admitted without

18 objection.

19 BY MR. SCHEXNAYDER:

02:56:45 20 **Q.** Did you discuss this conflict letter -- conflict  
21 waiver with your wife Leslie?

22 **A.** Probably not.

23 **Q.** Okay. Does she work with the business?

24 **A.** She doesn't work for anything in the legal aspect of

02:57:00 25 it that I know of.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

02:57:14

1 Q. All right. I just see her in some of these early  
2 e-mails transmitting documents and what have you so that  
3 is why I asked if you were working with her at all on this  
4 issue or -- does she have any substantive involvement in  
5 it?

6 A. No, not that I know of.

7 Q. Okay. Does she have another place of employment?

8 A. No.

02:57:31

9 Q. Okay. If you could turn to Exhibit 7, Defense  
10 Exhibit 7.

11 Do you recognize these e-mails?

12 A. It says "Marcia." Well, I would have done exactly  
13 what she told me here, to just skip over this.

14 Q. My question is: Do you recognize these e-mails?

02:58:36

15 A. No.

16 Q. All right. Do you deny that on October 16, Alia sent  
17 you and Marcia a copy of a draft answer?

18 A. No. I wouldn't do that. No.

02:58:55

19 Q. All right. And do you deny that on October 17, you  
20 responded, "Alia, I agree with what is written. Ed  
21 Tweed"?

22 A. Yes.

23 Q. You do dispute that?

24 A. No, I don't dispute it. No.

02:59:04

25 Q. Okay. That is you and that is your e-mail, right?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 **A.** Yeah.

2 **Q.** Okay.

3 MR. SCHEXNAYDER: I move to admit Defense  
4 Exhibit 7.

02:59:10

5 MR. BANES: No objection, Your Honor.

6 THE COURT: Very well. Defense 7 is admitted  
7 without objection.

8 Counsel, is this a good stopping point for  
9 our afternoon break? Anything we need to take care of  
10 before we break for the afternoon?

02:59:23

11 MR. BANES: There is a couple of things, Your  
12 Honor. I think I forgot to admit some exhibits earlier.

13 THE COURT: Well, you are going to get a chance  
14 to redirect this witness.

02:59:33

15 MR. BANES: I will do it then. That's fine.

16 THE COURT: Very well. 3:15.

17 THE LAW CLERK: All rise.

18 (Proceedings recessed from 2:59 p.m. to 3:15 p.m.)

19 THE LAW CLERK: All rise.

03:15:10

20 THE COURT: Please have a seat. Have a seat.

21 THE WITNESS: Yes, sir.

22 MR. BANES: Sorry, Your Honor. I was checking  
23 on a document.

24 THE COURT: Counselor.

03:15:33

25 MR. SCHEXNAYDER: All right, Your Honor. Just

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 a couple more questions.

2 BY MR. SCHEXNAYDER:

3 Q. If you could go back to Exhibit 8, sir. This is in  
4 the white notebook.

03:15:50

5 A. Yes.

6 Q. And we're back to the client service agreement with  
7 Veritas.

8 A. Uh-huh.

9 Q. Right, sir?

03:15:56

10 A. Yes.

11 Q. And one quick question about Section B, client's  
12 responsibilities. It is on page 3 of 5, I believe. It  
13 says, "client's Responsibilities, B."

14 Are you there?

03:16:12

15 A. Yes.

16 Q. And I think we have already established client is  
17 E & L, right, sir?

18 A. Yes.

19 Q. If you could look at Subpoint D, it says, "Client  
20 will notify Veritas of any unusual wage and hour practices  
21 of client, such as an alternative work scheduled, split  
22 shift, shift differentials, et cetera, that might affect  
23 Veritas' employees," right? Again, that's -- you with me?

24 A. Yes. Yes.

03:16:36

25 Q. And that is a responsibility on E & L; is that

EDWARD J. TWEED - CROSS BY MR. SCHEXNAYDER

1 correct?

2 **A.** Yes.

3 MR. BANES: Objection; calls for a legal  
4 conclusion.

03:16:43

5 THE COURT: Just a moment.

6 **A.** Yes.

7 THE COURT: Just a moment.

8 THE WITNESS: Oh, I didn't know you were  
9 talking to me, sir.

03:16:48

10 MR. BANES: Objection; calls for a legal  
11 conclusion, Your Honor.

12 THE COURT: Sustained.

13 Rephrase.

14 BY MR. SCHEXNAYDER:

03:16:53

15 **Q.** Is that your understanding, that that's a  
16 responsibility of E & L transfer?

17 **A.** I have no objection to it.

18 **Q.** All right. And the next sentence says, "It is  
19 client's responsibility to ensure that all of its wage and  
20 hour practices affecting Veritas' employees are in  
21 compliance with state and federal laws."

03:17:08

22 Do you see that?

23 **A.** Yes.

24 **Q.** And is it your understanding, again, that's -- when  
25 it says "client," it is talking about E & L Transfer?

03:17:19

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 A. Right.

2 Q. Okay.

3 MR. SCHEXNAYDER: I will pass the witness.

4 THE COURT: Any redirect?

03:17:25

5 MR. BANES: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. BANES:

8 Q. Mr. Tweed, stay on that for a moment in Exhibit 8,  
9 Defendant's Exhibit 8.

03:17:36

10 A. Yes.

11 Q. Now, with respect to the day rate at issue in all  
12 these cases that we are talking about, was that -- was  
13 that your practice?

14 A. I had never paid day rates before.

03:17:45

15 Q. Well, did you come up with that idea?

16 A. No.

17 Q. Whose practice was it?

18 A. I believe it was in place in the building, and then  
19 Marcia continued it after she collected the -- after she  
20 collected her employees' pay stubs.

03:17:58

21 Q. So that was not something you came up with?

22 A. No.

23 Q. Now, I think you started to talk about it, but do you  
24 think Mr. -- Mr. Schexnayder was going through several  
25 provisions in the -- in the client agreement with --

03:18:17

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 between Veritas and E & L.

2 Did you -- did you -- do you think that  
3 any of those provisions that -- did you believe that any  
4 of those provisions that required indemnity by E & L  
5 applied in any of these lawsuits, including Walker?

6 **A.** No.

7 **Q.** Why not?

8 **A.** Because it's past practice. I had never been -- it  
9 had never been brought up to me that I had done anything  
10 wrong in any of the other lawsuits. So, I mean, they were  
11 just continuing one right after another, and Marcia just  
12 kept paying them.

13 **Q.** Well, more importantly, leading up to the conflict  
14 waiver, did it -- any of those provisions that  
15 Mr. Schexnayder was trying to say now was your  
16 responsibility --

17 **A.** Right.

18 **Q.** -- did Mr. Ropollo talk to you about any of those?

19 **A.** I honestly don't ever think I ever talked to  
20 Mr. Ropollo.

21 **Q.** Did Ms. Wynne talk to you about any of those  
22 provisions and why you would be responsible instead of  
23 Veritas under this agreement?

24 **A.** No.

25 **Q.** Did she explain the agreement? Did she go through

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 line by line with -- in the agreement with you like we did  
2 today?

3 **A.** She never -- she -- she or Mr. Ropollo never  
4 discussed this agreement with me until today.

03:19:38

5 **Q.** I mean, what -- if you were -- if somebody is going  
6 to consult with you, what would you think -- what would  
7 you take that to mean?

8 **A.** If they were going to consult with me, I think they  
9 would be bringing an issue to me so that I could

03:19:51

10 completely comprehend and understand it.

11 **Q.** Did anyone actually sit down and talk to you about  
12 the conflict waiver, from Fisher & Phillips?

13 **A.** I never met anybody from Fisher & Phillips.

14 **Q.** Did anyone sit down and talk to you about the client  
15 agreement itself?

03:20:02

16 **A.** No.

17 **Q.** Did anyone sit there and tell you what Ms. Radel was  
18 telling them about the client agreement?

19 **A.** Absolutely not.

03:20:12

20 **Q.** Did they tell you about what she was telling you  
21 about the conflict waiver and what she wanted in it?

22 **A.** No.

23 **Q.** So I think earlier on cross -- or on

24 cross-examination you said leading up to the conflict

03:20:32

25 waiver that "I had no facts." What did you mean by that?

EDWARD J. TWEED - REDIRECT BY MR. BANES

03:20:51

1 **A.** So that -- you know, I entered -- I got this call  
2 from this law firm that I knew that Marcia was working  
3 with, and they were asking me for money, a retainer. So I  
4 was expecting to get something out of it. And I kept  
5 waiting. And I still have yet to see any results from the  
6 work they did, if they did any.

03:21:17

7 As far as I know, they didn't do any work.  
8 I mean, there was -- there was a -- a copy on one of the  
9 invoices where they -- they billed me for ADP's -- doing  
10 work with ADP, but I don't see how -- I don't even know  
11 how that they would bill me for ADP's work on their  
12 invoice.

03:21:28

13 **Q.** Well, we are not here to -- we are not here suing  
14 them for malpractice, are we?

03:21:40

15 **A.** No. I'm just confused. I mean, you know, if they  
16 didn't do any work for me, they must have been charging me  
17 for work they were doing for somebody else is what I was  
18 concerned with.

19 **Q.** What is it that you're really concerned about with  
20 respect to this conflict waiver?

21 **A.** That I got no information out of it. I had no facts,  
22 no information. I was -- I was flying by the seat of my  
23 pants, and I thought I was going to get representation.

03:21:53

24 **Q.** I mean, did you feel like they were listening to you  
25 even when you were sending them e-mails?

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 **A.** No.

2 **Q.** All right. So, let's take a look at some of these  
3 e-mails that we were going through earlier.

4 Well, before I get to that, I think you  
5 testified on cross that you didn't really read the  
6 document, the conflict waiver, in detail?

7 **A.** That is correct.

8 **Q.** All right. Now, what did you expect the law firm to  
9 do?

10 **A.** I expected them to represent me wholly and keep me  
11 safe.

12 **Q.** Well, had they been representing you up to that -- up  
13 to that point?

14 **A.** I felt that they were.

15 **Q.** All right. Now, did they -- did you expect them to  
16 sit down with you and talk to you about the document?

17 **A.** What I expected was that something came -- there  
18 would be something that came out of me paying them, and I  
19 got nothing. I got no phone calls. I got a couple of  
20 e-mails. I gave them, I think 15, almost \$20,000. And I  
21 might have had two -- two -- two phone calls from them, if  
22 I had two.

23 **Q.** And did you feel like they properly conveyed all the  
24 facts to you?

25 **A.** They didn't convey any facts to me.

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 Q. Well, do you think -- did you feel like they  
2 consulted with you on the content of the conflict waiver  
3 and told you what it meant?

4 A. No.

03:23:26

5 Q. I mean, at the -- in the final analysis, did you  
6 understand the conflict waiver?

7 A. All I understood about the conflict waiver was that  
8 Alia was going to cook up some kind of documents so  
9 that -- that I could be -- I didn't have to go out and get  
10 another lawyer.

03:23:46

11 Q. I think you already testified that you didn't feel  
12 like you had a choice at that point.

13 A. Well, she said the clock is running out.

14 Q. All right. Now -- okay. Sir, can you turn to  
15 Plaintiff's Exhibit 177 for a moment?

03:25:14

16 A. Do you need to stand up?

17 Q. Sorry?

18 A. Do you need to stand up?

19 Q. No, I am good.

03:25:29

20 A. Okay.

21 Q. You don't need to stand up.

22 A. Okay. 177?

23 Q. Yes, sir.

24 A. I am at 177.

03:25:40

25 Q. All right. Now, you testified about this on direct,

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 right?

2 **A.** Sure.

3 **Q.** All right. Now, first off, I want to --

4 MR. BANES: Your Honor, I would like to propose  
03:25:50 5 this document for admission.

6 THE COURT: Plaintiff's 177?

7 MR. BANES: Yes.

8 THE COURT: Any objection?

9 MR. SCHEXNAYDER: No, Your Honor.

03:25:58 10 THE COURT: Plaintiff's 177 is admitted without  
11 objection.

12 BY MR. BANES:

13 **Q.** Now, taking a look at the last sentence of -- of --  
14 if that e-mail from -- to Marcia from you, what is it that  
03:26:26 15 you say in there?

16 **A.** It says, "We also discuss responsibility for costs  
17 associated with findings after January 1st, 2016."

18 **Q.** Now, is that what the conflict waiver had in it?

19 **A.** No. They put in there January 1st, 2015.

03:26:41 20 **Q.** All right. So they didn't follow your -- you know,  
21 what you wanted in there?

22 **A.** That's correct.

23 **Q.** Was that the only time they didn't do that?

24 **A.** Unfortunately, it was such a short period of time  
03:26:55 25 where I was involved with them, I really didn't have a lot

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 of recollection of what they were doing or weren't doing.

2 **Q.** Let's take a look at Defendant's Exhibit 5.

3 When Mr. Schexnayder was cross-examining  
4 you, he was saying that this was -- this represented the  
5 agreement. Now, what does this -- what does this say  
6 here?

7 **A.** Oh, it says -- which part are you asking about?

8 **Q.** "The only issue I see" -- "Alia, the only issue I  
9 see."

10 **A.** Yeah. It says, "Alia, the only issue I see, should  
11 there be damages, Marcia and I agree that E & L and I  
12 would be responsible for 50 percent of the damages after  
13 January 1st, 2015. Veritas would be responsible for 100  
14 percent of the damages prior to that."

15 **Q.** Well, and is that how it ended up in the conflict  
16 waiver?

17 **A.** Yeah. It probably did because I put the wrong date  
18 down.

19 **Q.** Well, let's take a look at Exhibit 16.

20 I mean, did they -- do you remember them  
21 making you responsible for only 50 percent of the damages  
22 after January 1st, 2015?

23 **A.** Do I -- say it one more time, sir.

24 **Q.** Do you remember you being responsible under the  
25 purported conflict waiver for only 50 percent of the

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 damages after January 1st of 2015?

2 **A.** You know, unfortunately, I'm just not clear on what  
3 the dates were. I mean, this is four years ago.

4 **Q.** Okay. Take a look at exhibit -- Plaintiff's Exhibit  
5 16 for a second.

6 **A.** Okay. This is -- this is February of 2016. This is  
7 after I had ended my relationship with Veritas and we had  
8 taken on the employees.

9 **Q.** Are you in Plaintiff's Exhibit 16? You're in  
10 Defendant's Exhibit 16, sir.

11 **A.** Okay.

12 **Q.** It's in Volume 1 of the black books.

13 **A.** 16?

14 **Q.** 16.

15 **A.** Okay.

16 **Q.** So -- all right. So take a look at apportionment of  
17 fees and damages related to the lawsuit on page 2.

18 **A.** Yes.

19 **Q.** It says -- the second paragraph, can you just read  
20 that to yourself for a minute, sir?

21 **A.** Okay.

22 **Q.** So we already saw in your September 18th e-mail that  
23 you were -- you were saying that they are going -- that  
24 Veritas should be responsible for -- for back wages after  
25 January 1st, 2016.

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 **A.** That's correct.

2 **Q.** So you communicated that.

3 And then in this e-mail, you communicated  
4 that assuming there could be an agreement at this point,  
5 that E & L would be responsible for 50 percent of the  
6 damages after January 1st, 2015.

7 Now, looking at the second paragraph on  
8 page 2 of the conflict waiver at Plaintiff's Exhibit 16,  
9 are either of those things in there?

10 **A.** I don't -- I don't see them there, no.

11 **Q.** All right. So if there was any agreement with -- if  
12 there could be an agreement with Ms. Radel, it is  
13 certainly not represented in the conflict waiver?

14 **A.** That's correct.

15 **Q.** And after the discussion with Ms. Wynne, did you  
16 feel -- did you feel like you had free rein to agree to  
17 what you wanted?

18 MR. SCHEXNAYDER: Objection; vague.

19 THE COURT: Overruled.

20 **A.** After the discussion with Alia Wynne, I felt that  
21 they were going to steer me in whatever direction they  
22 wanted to to get this done as quickly as possible.

23 BY MR. BANES:

24 **Q.** All right. So did you feel like you had much  
25 discretion at that point?

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 **A.** No.

2 **Q.** And from this it doesn't look like they followed your  
3 direction at all.

4 **A.** That's correct.

03:32:45

5 MR. BANES: Your Honor, did we already admit 5?  
6 I think we did.

7 THE COURT: Which 5?

8 MR. BANES: Did we already admit 5, sir?

9 THE COURT: Which 5?

03:32:51

10 MR. BANES: Defendant's Exhibit 5.

11 THE COURT: Defendant's 5 is in evidence.

12 MR. BANES: Okay. Thank you, Your Honor.

13 Okay. Your Honor, I wanted to go back and  
14 propose for admission a few documents.

03:33:17

15 First of all, 197, Plaintiff's Exhibit  
16 197. It is confidential, so it is not -- it's subject to  
17 protective order.

18 THE COURT: You are about to enter it on the  
19 record in a public trial, though.

03:33:36

20 MR. BANES: Well, I don't really want to do --  
21 I want to do that under seal if we can, if we can seal that  
22 particular document, because it is confidential.

23 THE COURT: Under -- you said subject to a  
24 protective order in this case or another case?

03:33:52

25 MR. BANES: This case, Your Honor. It is

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 confidential in this case. It is sealed in this case. So  
2 it's already in the record.

3 THE COURT: Not between you two parties. There  
4 is another party, evidently, that --

03:34:02

5 MR. BANES: No, they have -- well, they have  
6 it, too. So they have seen it.

7 THE COURT: No, no. That is not my question.

8 MR. BANES: All right.

03:34:10

9 THE COURT: It says a confidential settlement  
10 agreement. As to the parties to the settlement agreement,  
11 it is not two of you, obviously. It must be other parties.  
12 And what you're proposing is to enter onto the record for  
13 purposes of this trial the confidential settlement  
14 agreement of other parties.

03:34:25

15 MR. BANES: Well, but only -- now, it's -- we  
16 have already released it to Fisher & Phillips, so they have  
17 seen it. So, I am -- all I am proposing is that it not be  
18 allowed outside these proceedings or, you know, be released  
19 to third parties outside the parties to this lawsuit,

03:34:42

20 because it's been released to everybody here.

21 THE COURT: Counselor?

22 MR. SCHEXNAYDER: No objection, Your Honor.

23 THE COURT: I'm sorry. That was 198?

24 MR. BANES: 197, Your Honor.

03:35:01

25 THE COURT: I'm sorry. 197 is admitted under

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 seal --

2 MR. BANES: And then --

3 THE COURT: -- without objection.

4 MR. BANES: 198, Your Honor, Plaintiff's

03:35:35

5 Exhibit 198.

6 THE COURT: 198 is already in evidence.

7 MR. BANES: Oh, it is already in? 200 and 201.

8 MR. SCHEXNAYDER: No objection.

9 THE COURT: Plaintiff's 200 and 201 are

03:35:59

10 admitted without objection.

11 Counselor, are you using your phone?

12 MR. BANES: I am trying to get the answer on  
13 that document, Your Honor.

14 THE COURT: Well, don't use your phone in the  
03:36:07 15 courtroom, Counselor.

16 MR. BANES: I'm sorry, Your Honor.

17 Can I -- can I just take a quick break on  
18 1 -- Exhibit 19 --

19 THE COURT: We just came from a break,  
03:36:19 20 Counselor.

21 MR. BANES: I know, Your Honor. I called her  
22 and I asked her to text me to see if that one document that  
23 we were trying to figure out was out of order or not is in  
24 the correct order.

03:36:29

25 THE COURT: We can do that at a later time.

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 MR. BANES: Okay. Well, I have confirmed that  
2 it is -- that is the proper order.

3 THE COURT: Okay. It -- the order that it is  
4 currently in the notebook?

03:36:39

5 MR. BANES: Yes, Your Honor.

6 THE COURT: That objection is still sustained.  
7 What is next?

8 MR. BANES: All right.

9 THE COURT: Anything further, Counselor?

03:37:50

10 MR. BANES: Just one last question, Your Honor.

11 BY MR. BANES:

12 Q. Turn to Defendant's Exhibit 6, Mr. Tweed.

13 A. Defendant's number what?

14 Q. 6.

03:38:08

15 A. Okay.

16 Q. I just want you to elaborate, Mr. Tweed, on -- you  
17 signed the conflict waiver, and we have seen that.

18 A. Yes.

03:38:18

19 Q. But what was that agreement, based upon your view,  
20 that did not happen?

21 A. Well, I wasn't informed of anything. So I had -- I  
22 had no knowledge of really why I was being entered into  
23 this other than needing to pay. So, at that point, I  
24 felt -- I felt that I was, in my opinion, along for the  
03:38:48 25 ride of the trial and that -- that they would have --

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 because I thought that's what -- that's what the law was,  
2 was to -- to receive compensation and properly administer  
3 the law. And I didn't -- I didn't -- I waited for -- to  
4 see if some of that happened, and all of a sudden they  
5 were gone. There was nothing except for cancelled checks.

03:39:15

6 So, I thought they had a fiduciary  
7 responsibility to give me benefit for the money that I  
8 gave them.

9 Q. I mean, did you -- do you feel that the -- did you  
10 feel that the conflict waiver was based on full disclosure  
11 to you?

03:39:32

12 A. Absolutely not.

13 Q. Why do you say that?

14 A. Because -- because nobody counseled me. There was no  
15 this is what -- this is what's right. This is what's  
16 wrong. This is what could happen. There was -- you know,  
17 I was paying them as -- my thought was that I was paying  
18 them as my lawyer and that they had my back, that they  
19 would explain to me what everything meant. I am not a  
20 lawyer.

03:39:42

03:40:02

21 MR. BANES: Pass the witness, Your Honor.

22 THE COURT: Any recross?

23 MR. SCHEXNAYDER: Just a few questions, Your  
24 Honor.

03:40:13

25 Point of clarification in housekeeping, I

EDWARD J. TWEED - REDIRECT BY MR. BANES

1 referred in my cross to Plaintiff's Exhibit 163. I want to  
2 make sure to offer that into evidence.

3 THE COURT: Plaintiff's 163. Any objection?

4 MR. BANES: All of it or just part of it, Your  
5 Honor?

03:40:45

6 THE COURT: He seems -- he has offered all of  
7 it.

8 MR. BANES: Well, I don't know if we have laid  
9 a foundation for all of it.

03:40:51

10 THE COURT: So you have a legal objection?

11 MR. BANES: Yes, Your Honor.

12 THE COURT: Okay. What is your legal  
13 objection?

14 MR. BANES: Well, there's -- there is only one  
15 here where Mr. Tweed's copied on it. The rest of them, I  
16 don't think he was copied on at all, and so I don't -- I am  
17 not so sure --

03:40:58

18 THE COURT: Very well.

19 Counselor, your response?

03:41:08

20 MR. SCHEXNAYDER: It's a series of e-mails  
21 beginning with an e-mail that Mr. Tweed was copied on and  
22 his wife and his agent of service. I -- I guess we could  
23 redact the other two e-mails that are attached to it even  
24 though they're pretty inconsequential.

03:41:27

25 THE COURT: Which e-mail are you seeking to

EDWARD J. TWEED - RECROSS BY MR. SCHEXNAYDER

1 have introduced through this witness? Was it the second  
2 page?

3 MR. SCHEXNAYDER: The second page was really  
4 the one -- frankly, that's all I care about.

03:41:40

5 THE COURT: Any objection to that page?

6 MR. BANES: Well, apart from the question,  
7 since it is not asked of Mr. Tweed, I don't have any  
8 objection to that.

03:41:57

9 THE COURT: The second page, document numbers  
10 6 -- it's Exhibit 693A, and it will be Bates Number 6973,  
11 is admitted without objection.

12 MR. BANES: 163A, Your Honor?

13 THE COURT: I am calling it 163A since it is a  
14 subpart of the original exhibit.

03:42:15

15 MR. BANES: Okay.

16 MR. SCHEXNAYDER: Thank you, Your Honor. Just  
17 a couple more follow-up questions for the witness.

18 **RECROSS-EXAMINATION**

19 BY MR. SCHEXNAYDER:

03:42:22

20 **Q.** Mr. Tweed, did I you understand you to say that after  
21 you signed the conflict waiver you had no further  
22 communication with Fisher & Phillips?

23 **A.** Not that I recall.

03:42:36

24 **Q.** All right. If you could pull out exhibit -- my white  
25 exhibit notebook and turn to Defense Exhibit 11.

EDWARD J. TWEED - RECROSS BY MR. SCHEXNAYDER

1 Do you recognize this e-mail exchange  
2 between you and Ms. Wynne dated May 30, 2016?

3 THE COURT: Do you have an objection, Counsel?  
4 You're standing.

03:43:03 5 MR. BANES: Oh, I'm sorry, Your Honor. I'm  
6 sorry.

7 **A.** Well, I think that what happened here, as I  
8 understand it, was that Marcia asked me to request -- she  
9 asked -- she asked me if I would go to DHL or to -- I  
03:43:58 10 think the company's name at the time was Geotabs -- and  
11 retrieve information that she wanted to use for the  
12 trial -- or for the -- for the cases.

13 **Q.** Okay. Sir, my question is, does this refresh your  
14 recollection that you were communicating directly with  
03:44:16 15 Ms. Wynne, Alia Wynne, on May 30, 2016 regarding the case?

16 **A.** Yeah. I didn't say I didn't have any response, but I  
17 did say that I -- I had minimal or none that I was  
18 familiar with, right. That's correct.

19 **Q.** Well, I mean, I can go through each one of the  
03:44:35 20 subsequent exhibits here that show that you had e-mail  
21 communications with Fisher & Phillips. So I want to make  
22 sure you're not saying under oath you had no  
23 communications with Fisher & Phillips after the conflict  
24 waiver.

03:44:45 25 You are not saying that, are you, sir?

EDWARD J. TWEED - RECROSS BY MR. SCHEXNAYDER

1 **A.** No.

2 **Q.** And at any time did you contact them to find out what  
3 was going on in the case and they refused to answer?

4 **A.** No.

03:44:55 5 MR. SCHEXNAYDER: I'll pass the witness.

6 THE COURT: Sir, you may step down.

7 Mr. Banes, call your next witness.

8 MR. BANES: I would like to call Fisher &  
9 Phillips to the stand, Your Honor, through its corporate  
03:45:22 10 representative, Mr. Ropollo.

11 THE COURT: Mr. Ropollo.

12 THE WITNESS: Your Honor, may I bring water up?

13 THE COURT: You may. If you will stand next to  
14 the witness stand, face the clerk and raise your right  
03:45:44 15 hand.

16 (Witness sworn.)

17 THE WITNESS: I do.

18 THE LAW CLERK: Thank you.

19 THE COURT: And, sir, if you will pull the mic  
03:46:00 20 a little bit closer to you.

21 And, Counselor, I assume you are aware the  
22 court reporter cannot take down two people talking at once.  
23 Please allow the lawyers to finish their question before  
24 you begin your answer. I'll make sure they extend to you  
03:46:15 25 that same courtesy. Understood?

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 THE WITNESS: Yes, sir.

2 THE COURT: Very well.

3 Counselor.

4 MR. BANES: Thank you, Your Honor.

03:46:44

5 **STEPHEN JOHN ROPOLLO,**

6 duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MR. BANES:

03:46:41

9 **Q.** Mr. Ropollo, could you please state your full name  
10 and current job for the record?

11 **A.** My name is Stephen John Ropollo, and my current  
12 position is regional managing partner for Fisher &  
13 Phillips in Houston.

03:46:54

14 **Q.** Are you here to speak on behalf of Fisher & Phillips  
15 today?

16 **A.** I am.

17 **Q.** Mr. Ropollo, can you please turn to Plaintiff's  
18 Exhibit 16?

19 **A.** I have it.

03:47:22

20 **Q.** All right. Now, Mr. Ropollo, did you ever talk to  
21 Mr. Tweed about this document?

22 **A.** I did not personally. No.

23 **Q.** Do you know if Ms. Wynne ever personally sat down  
24 with Mr. Tweed and went through this document with him?

03:47:39

25 **A.** I don't know that.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 Q. Was there any other conflicts or potential conflicts  
2 discussed with Mr. Tweed other than what is contained in  
3 Exhibit 16 at the beginning of the representation?

03:48:07

4 A. No. All the material factors that go into deciding  
5 whether joint representation could be accomplished in this  
6 case were included in the letter.

7 Q. All right.

8 MR. BANES: Strike a portion of that as -- move  
9 to strike a portion of that as nonresponsive.

03:48:21

10 THE COURT: Just a moment. Overruled.

11 BY MR. BANES:

12 Q. Okay. Mr. Ropollo, you say that everything that  
13 needed to be in it was in it at the time?

14 A. Yes.

03:48:35

15 Q. All right. And is that your position here today?

16 A. It is.

17 Q. Now, in Fair Labor Standards Act law -- what is your  
18 background generally? What kind of law do you practice?

19 A. So, I have been a labor and employment lawyer since  
20 1990.

03:48:55

21 Q. All right. Now -- and now you manage labor and  
22 employment lawyers?

23 A. In addition to practicing labor and employment law,  
24 yes.

03:49:05

25 Q. All right. And was Ms. Wynne hired as a labor and

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 employment lawyer at Fisher & Phillips, too?

2 **A.** She was.

3 **Q.** Now, Fair Labor Standards Act cases, are those cases  
4 always limited to just the -- suing the companies by  
5 plaintiffs?

03:49:20

6 **A.** Meaning the companies that employ the individuals?

7 **Q.** Yes.

8 **A.** Liability can be extended under the Fair Labor  
9 Standards Act to joint employers, to owners, managers of  
10 businesses who are involved in setting the pay practices  
11 of the -- of the entity. So there are -- there is  
12 potential liability for others besides just the single  
13 company.

03:49:39

14 **Q.** So there is potential liability for, say, the owners  
15 of the companies or the presidents or officers of the  
16 companies that are sued?

03:49:54

17 **A.** There can be, yes.

18 **Q.** Was there potential liability for the owners and  
19 officers of the company sued in this case, in Walker?

03:50:05

20 **A.** If the plaintiffs were able to demonstrate that the  
21 violations occurred and that the entities that you're  
22 referring to were responsible for them, then, yes, the  
23 owner of the entity could also be designated an employer  
24 under the statute.

03:50:23

25 **Q.** Was that -- was that issue with respect to Ms. Radel

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 discussed with Mr. Tweed?

2 **A.** I don't understand your question.

3 **Q.** Well, the conflict -- Exhibit 16 isn't signed by  
4 Ms. Radel individually.

03:50:36

5 **A.** She wasn't sued individually. She wasn't named an  
6 individual party as Mr. Tweed had been.

7 **Q.** But isn't the goal of a conflict letter to not  
8 only -- not only list actual con -- you know, potential --  
9 all potential conflicts?

03:50:53

10 **A.** I think all potential conflicts between the parties  
11 that you're seeking to represent ought to be included in  
12 the -- in the waiver letter.

13 Here there were three entities that had  
14 been sued, and so those were the entities that we believed  
15 ought to sign the waiver of conflict letter, and that is  
16 who did.

03:51:06

17 **Q.** Well, and you didn't think there would be any adverse  
18 consequences by those that might be liable being excluded  
19 from it?

03:51:19

20 **A.** No. I -- there could have been any other number of  
21 entities that might be liable that I wasn't familiar with.  
22 I -- the only reasonable entities to sign a conflict  
23 letter, in my view, are the entities that are -- that  
24 are -- you are going to represent in the litigation, and  
25 that's why we included those.

03:51:37

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 Q. Well, in Fair Labor Standards Act litigation, it  
2 would extend to those that were the officers of the  
3 companies that were responsible for setting the pay  
4 policies, wouldn't it?

03:51:53

5 A. If that were the case, then in every conflict letter,  
6 I would have to have every manager of every employer or  
7 potential employer sign a waiver letter like that, and I  
8 just don't think that is reasonable or required under the  
9 rules.

03:52:05

10 Q. Well, in this case you just decided that having  
11 Ms. Radel sign it wasn't -- wasn't necessary.

12 A. Because she wasn't a party. That's right.

13 Q. All right. And was that the only reason you decided  
14 not to have her sign it?

03:52:17

15 A. That was the only reason. Had she individually been  
16 named as a party, then she would have -- we would have  
17 drafted a separate letter to have her sign as well.

18 Q. Sir, can you turn to Exhibit 141, please, Plaintiff's  
19 Exhibit 141?

03:53:37

20 A. I am there.

21 Q. Can you identify this document for the record, sir?

22 A. It's a multipage document, an e-mail chain that  
23 begins on August 28th, an e-mail from Dave Moulton, the  
24 lawyer in the Bellard case, against Veritas, to Alia, me  
25 and my assistant, Michelle Bennett. And then he

03:54:14

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 apparently is copying a person in his office as well, and  
2 it is enclosing Rule 26 disclosures.

3 And then there are a series of other  
4 e-mails that follow relating to the Bellard case and  
03:54:35 5 referencing the disclosures.

6 And then finally on August 31, there is an  
7 e-mail from Alia to me and Ms. Radel relating to a video  
8 that was being provided to Ms. Radel of Mr. Tweed  
9 discussing pay practices with the employees at E & L that  
03:55:06 10 had been provided to us by Mr. Moulton in that litigation.

11 And then I can go on towards the front of  
12 the packet. Do you need me to continue?

13 **Q.** No. I think that is good enough for now. Let's talk  
14 a little bit about the prior cases.

03:55:22 15 You're familiar with the Ozen and the  
16 Mason cases and the Emerson and Bellard and all those  
17 lines of cases? You are familiar with all of those,  
18 aren't you?

19 **A.** I am familiar with them, yes.

03:55:33 20 **Q.** All right. Now, were they the same type of case?

21 **A.** They were each Fair Labor Standards Act cases, each  
22 asserting roughly the same theory of liability. They  
23 involved different individuals. Only the Walker case was  
24 filed as a collective action and was pursued as a  
03:55:56 25 collective action. And the parties were not always the

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1 same. Ozen, Bellard, and -- Ozen, Bellard, and I can't  
2 remember the third one, were all against Veritas. And  
3 then against Mason, it was Mr. Tweed and E & L Transfer.  
4 And then as to the Walker case, it was both.

03:56:22

5 **Q.** Did you think that there was always potential  
6 liability for both E & L and Veritas in any of those  
7 cases?

8 **A.** Yes, I did.

03:56:32

9 **Q.** Did you think that there was also potential liability  
10 for Ms. Radel and Mr. Tweed in any of those cases?

11 **A.** I thought there was liability under the Fair Labor  
12 Standards Act. None of -- Ms. Radel had not been sued, so  
13 I don't make it a practice to hypothesize on potential  
14 liability of unnamed parties.

03:56:49

15 But with respect to those who had been  
16 named, yes, I was concerned about violations of the Fair  
17 Labor Standards Act based upon the pay practices that had  
18 been described to me.

03:57:05

19 **Q.** All right. Now -- and historically -- on all those  
20 cases, who was handling those cases from the companies?

21 **A.** From the companies?

22 **Q.** Yeah. From -- between Veritas and E & L, who was  
23 handling them?

03:57:18

24 **A.** I'm not sure I understand what you mean by  
25 "handling."

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1 Q. Who did you -- who was your point of contact?

2 A. I understand.

3 Marcia Radel was the person that I  
4 primarily discussed the matters with, but there were also  
5 circumstances when I had to speak with employees -- or  
6 rather supervisors on-site, including Tom Dixon, and there  
7 may have been one or two others.

8 Q. All right. So -- and the managers on-site were also  
9 Veritas employees?

10 A. Now, you're using the term "employees" in a way that  
11 is a little imprecise. If you mean under the Fair Labor  
12 Standards Act, the definition of employer and employees is  
13 a little bit different. So I'm not sure you want me to  
14 get into that. But --

15 Q. All I am asking really is who were they paid by?

16 A. They -- they were paid -- the checks came from ADP,  
17 which is the paycheck company. And as I understand it,  
18 Veritas was the one that at least initially funded the  
19 payments that -- that paychecks made -- or rather that ADP  
20 made.

21 Q. Well, during -- up through Bellard, there -- Veritas  
22 was the one funding all those payments, right?

23 A. As far as I knew. I didn't know anything about what  
24 was going on behind the scenes. All I knew was that if  
25 there was a settlement of any of these matters, I would

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1 receive checks for the settlement and for attorneys' fees  
2 for the plaintiffs and then forward them on to the  
3 plaintiff's counsel, and I would get them from Veritas.

03:58:59

4 Q. Well, at what point did you -- did you advise Ms. --  
5 well, when -- when Mason and Ozen were filed in February  
6 of 2014, did you advise Ms. Radel on that?

7 A. On the risks associated with those cases?

8 Q. Yes.

9 A. Yes.

03:59:13

10 Q. All right. And what did you tell her at that time?

11 A. That they were exceeding -- there was an exceedingly  
12 high chance that there was potential liability in light of  
13 the day rate pay plan that had been in place with these  
14 employees.

03:59:27

15 Q. Now, do you know if -- did you discuss that with  
16 Mr. Tweed at that time?

17 A. No.

18 Q. Did anyone at Fisher & Phillips discuss that with  
19 Mr. Tweed?

03:59:36

20 A. No.

21 Q. All right.

22 A. Not to my knowledge. I can only speak for myself,  
23 but not that I am aware of.

03:59:49

24 Q. Did Ms. Radel -- did Ms. Radel express some concern  
25 about your advice with respect to the day rate?

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

04:00:12

1 **A.** I think that -- I received an e-mail from Ms. Radel  
2 just a month or two after we began working on those two  
3 cases, and she indicated that essentially Ed Tweed needed  
4 some convincing that my advice that the day rate was  
5 problematic, I needed to provide some -- some guidance or  
6 backup, an e-mail or something, because he was going to  
7 speak with DHL, and they just simply didn't believe that  
8 the day rate was problematic.

04:00:32

9 So I put together an e-mail with the  
10 advice. I addressed the motor carrier exemption and its  
11 likely inapplicability. I discussed what the potential  
12 damages were, and that was fairly soon after the lawsuits  
13 were filed.

04:00:50

14 **Q.** Did Ms. Radel also express surprise to you because of  
15 some advice she said she might have gotten from ADP?

04:01:09

16 **A.** I think that she, like many clients, especially in  
17 the wage/hour area, expressed dismay that common sense  
18 doesn't prevail and that you can't just do what makes --  
19 what the employees want, there would -- everybody agrees  
20 to. And so that was frustrating to her. And she did  
21 mention that it was inconsistent with her understanding of  
22 how it ought to be done and that ADP, that was processing  
23 the payroll, never told her that it was a problem.

04:01:29

24 **Q.** Well, did she -- did she also tell you that -- that  
25 she got the advice about the day rate from ADP?

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** I am not sure she ever characterized it as advice. I  
2 think what she said was that she expected, given that she  
3 was paying money to ADP, that if there was an issue about  
4 any Fair Labor Standards Act question, that they would  
5 bring it to her attention because they were a big company.

04:01:44

6 **Q.** Did that -- did that advice that she gave to  
7 Mr. Tweed, based on what she had heard from -- or  
8 coordinated with ADP on, did that have -- did she tell you  
9 that that had any impact on her decision to indemnify

04:02:08

10 E & L or Mr. Tweed on the prior -- on the cases prior to  
11 Walker?

12 **A.** No.

13 **Q.** She never told you that?

14 **A.** No.

04:02:36

15 **Q.** All right. Now, turn back to Exhibit 141,  
16 Mr. Ropollo.

17 **A.** I am still there.

18 **Q.** All right. Turn first to the e-mail from Alia to you  
19 on August 31st, 2015, at 2:58, at FP012082.

04:03:01

20 **A.** Could you give me the Bates number again?

21 **Q.** FP012082, sir.

22 **A.** Okay. I am there.

23 **Q.** Take a look at the paragraph at the bottom where it  
24 says, "Finally."

04:03:19

25 **A.** Yes.

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 Q. All right. Now, do you remember -- first off, do you  
2 remember this e-mail?

3 A. From Alia to -- it's really from Alia to Marcia. I  
4 am listed in the "To" line, but she is conveying all of  
5 this information to Marcia. And, yes, I do remember  
6 seeing it.

7 Q. So this is authentic and this happened?

8 A. This e-mail did happen just the way it says it did.

9 Q. All right. So -- and did she advise Ms. Radel at  
10 that time that she should notify Ed about the collective  
11 action?

12 A. So the -- as I understand it, yes, she did do that.  
13 We had just learned that the collective action was filed  
14 through the case service that we receive from the  
15 courthouse indicating that Mr. Tweed and E & L Transfer  
16 had been sued by Walker in a collective action.

17 And that was the only genesis of  
18 communicating with her about it. She didn't reach out to  
19 us. We kind of told her, "Hey, this is out there."

20 Q. What was Ms. Radel's response to that in the e-mail  
21 subsequent?

22 A. I mean, I -- in the e-mail up top?

23 Q. Yes.

24 A. Well, she refers to being able to review the video  
25 and she will look at it more -- in more detail. And then

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

04:05:02

1 she asks, "Why would it be my responsibility to notify Ed  
2 of the Walker collective action? Doesn't Walker's counsel  
3 need to make sure Ed is served? Is the default against  
4 Veritas? We may need to talk tomorrow. I have a 10 a.m.  
5 conference call but can be available after that. Let me  
6 know a good time for you."

04:05:14

7 **Q.** Did this give you any concern about whether there  
8 might be a potential conflict already with -- between  
9 Veritas and E & L?

10 **A.** No. The lawsuit had not been served on either party.  
11 As far as I knew, at the time Veritas had not been named  
12 to the suit. So if -- all this is suggesting is that --  
13 that, you know, Mr. Tweed would likely be retaining his  
14 own counsel.

04:05:35

15 **Q.** Well, you have represented Mr. Tweed on the prior  
16 cases. Did you feel any obligation to him here?

04:05:52

17 **A.** I had only represented Mr. Tweed on the -- on the  
18 Mason case. That was the only case in which he was a  
19 named party. And so as the engagement letter indicated,  
20 once we resolve the matter for -- for a client, unless  
21 they specifically retain us for either ongoing general  
22 advice or a specific new matter -- and I think in the --  
23 in the engagement letter, I specifically mentioned a  
24 wage/hour audit or something like that -- then we would  
25 essentially disengage. And that is what happened with

04:06:14

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 respect to Mr. Tweed and -- you know, after the Mason case  
2 was resolved.

04:06:30

3 **Q.** Well, let me ask this: Was there any -- was there  
4 any break in time between the Mason and Ozen case and the  
5 Walker case that a day rate was active and ongoing with  
6 you on one of these cases? Wasn't it -- weren't they --  
7 wasn't there at least one of them filed and active and  
8 working on -- you were working on all of them at any given  
9 time?

04:06:47

10 **A.** Right. But they weren't involving Mr. Tweed or E & L  
11 as defendants. So, if you're asking me whether I was  
12 representing him on these other cases, my answer is, from  
13 the moment that we resolved the Mason litigation until the  
14 time when he retained us to represent him in Walker in  
15 this -- this joint arrangement, we were not representing  
16 him directly. He was a material witness certainly because  
17 he had information related to these lawsuits against  
18 Veritas, but he wasn't sued.

04:07:06

19 **Q.** Well, but he was sued on Walker.

04:07:20

20 **A.** Yes. Like I said, up until Walker, when we began  
21 working for him after he signed the engagement letter,  
22 that's when we began. We renewed, essentially, a legal --  
23 an attorney/client relationship with him and his company  
24 at that time.

04:07:35

25 **Q.** And through doing these cases, did you come to

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1 understand what the relationship between Veritas and E & L  
2 was?

3 **A.** Yes.

4 **Q.** At what point did you understand that?

04:07:46

5 **A.** From the very first case.

6 **Q.** Did you understand that Veritas was hired to do  
7 outside HR and staffing for -- for these contracts?

8 **A.** Yes.

04:08:01

9 **Q.** All right. Did you understand that Veritas was  
10 E & L's only client?

11 **A.** I did not understand that at the time.

12 **Q.** Did you inquire about that or talk to Ed or Ms. Radel  
13 about what implication that might have, if they were the  
14 only -- if they were the sole -- if Veritas was -- was --  
15 well, if E & L was Veritas' only client?

04:08:19

16 **A.** I didn't have any reason to suspect that. I didn't  
17 inquire about it, and I'm not sure it would have mattered.

18 **Q.** Well, ultimately that did matter in the case, didn't  
19 it?

04:08:39

20 **A.** No.

21 **Q.** It didn't matter?

22 **A.** The fact that the --

23 **Q.** It didn't matter when they stopped doing business  
24 together and Ms. -- Ms. Radel decided to shut down Veritas  
25 because of that? That didn't matter at all?

04:08:47

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** Well, those are two different things.

04:09:02

2 If you're asking me whether the -- the  
3 decision not to do business with -- with your client had  
4 any bearing on any conflict issues or how -- why we  
5 eventually decided to withdraw, the answer is no.

04:09:18

6 With respect to the dissolution, though,  
7 of the company, when Veritas said it was not going to be  
8 able to meet its financial obligations under the conflict  
9 waiver letter and the apportionment deal contained in  
10 that, then, yes, that was a real problem because we had a  
11 real conflict then that could not be waived, and we needed  
12 to withdraw.

04:09:31

13 **Q.** Did you understand that the reasons you couldn't meet  
14 her financial obligations was because she shut Veritas  
15 down after the -- after E & L and her separated?

16 **A.** Again, those are -- those are two different things  
17 you're conflating.

04:09:49

18 The dissolution, shutting down the  
19 company, was a direct issue and very material. Stopping  
20 the business with -- with, you know, your client might not  
21 have had any bearing on it. I don't know what their  
22 capital situation was like. I don't know whether they  
23 were going to be in a position to, you know, pay for  
24 ongoing legal fees or satisfy a judgment just through its  
25 own capital reserves. I just don't know. And so just

04:10:06

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 stopping doing business with your client would have been a  
2 nonstarter for me. It wouldn't have made a difference.

04:10:22

3 **Q.** Well, when you're investigating a conflict waiver,  
4 isn't it important to understand the relative positions of  
5 the parties so that you can advise them intelligently?

6 **A.** Well, I don't know what you mean by "relative  
7 positions."

04:10:38

8 **Q.** Well, here, with Veritas being -- having a single  
9 client and it being its only stream of income, wouldn't  
10 that be important for the inquiry?

11 **A.** No. I don't believe so. I mean, from my  
12 perspective, the relevant inquiry is whether there are any  
13 conflicts that the two parties have with respect to the  
14 claims that have been asserted.

04:10:53

15 The -- whether -- as I heard earlier  
16 today, Mr. Tweed was getting ready to fire Marcia or  
17 Marcia was getting ready to fire Mr. Tweed. That really  
18 would not have made any difference in terms of what we  
19 disclosed in this process.

04:11:08

20 **Q.** Well, isn't that just half of the inquiry, about  
21 whether there is a direct conflict between the two? Isn't  
22 the other part of this that -- whether your representation  
23 would be limited because of your representation of other  
24 parties? Isn't that part of the inquiry here, too, or  
25 because of your inability to disclose certain things?

04:11:30

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** I don't understand your question.

2 **Q.** Well, that's the other half of that same conflicts  
3 provision, isn't it? Whether your -- whether your ability  
4 to adequately represent all the clients and disclose --  
04:11:47 5 and fully disclose things to them, that's part of the  
6 inquiry, isn't it?

7 **A.** I would agree that in determining whether or not a  
8 lawyer can represent two parties, he must satisfy himself  
9 that he can represent both effectively and also disclose  
04:12:06 10 to those parties any material facts that need to be  
11 determined and their making the decision to go along with  
12 it.

13 **Q.** Well, let's take a look at the e-mail of September  
14 1st, 2015, sir, at FP012081 in Exhibit 141.

04:12:29 15 **A.** Yes, I am there.

16 **Q.** All right. Can you read the second sentence of that  
17 e-mail to Ms. Radel from Ms. Wynne?

18 **A.** So Alia e-mails Ms. Radel and says, "I" -- the first  
19 sentence says, "I don't mean to suggest that you are  
04:12:48 20 legally obligated to contact Ed, but it might be a good  
21 idea so he knows that he needs to hire counsel on his own.  
22 Steve suggested that Ed might mistakenly believe that  
23 Veritas is going to handle this suit because it handled  
24 the previous FLSA actions."

04:13:04 25 **Q.** Does that refresh your recollection of whether you

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1 had discussed that Veritas had covered the prior actions  
2 and that Ed might believe that the same would be  
3 appropriate here?

04:13:20

4 **A.** No. I am hypothesizing about what Mr. Tweed might  
5 think. I mean, I -- the reality is that I had no  
6 discussions with him about any of the previous settlements  
7 in terms of the numbers, how much it ought to be settled  
8 for, whether to settle. I did know that Marcia was taking  
9 the lead in handling those cases and deciding -- making  
10 decisions about them.

04:13:41

11 **Q.** All right. And you were copied on this e-mail to  
12 Ms. Radel?

13 **A.** On September 1st? Yes, I was.

04:14:11

14 **Q.** Did you pipe in or say anything else about this  
15 issue?

16 **A.** I don't believe so. Not right away at least. Not in  
17 this chain.

18 **Q.** All right. Now, turn to the e-mail that starts at  
19 FP12078, sir.

04:14:32

20 **A.** So the first page of the exhibit?

21 **Q.** Yes, sir.

22 **A.** Yes.

23 **Q.** All right. Now -- now, were you -- was Fisher &  
24 Phillips already advising Ms. Radel at this point?

04:14:44

25 **A.** Yes. And Bellard was an ongoing matter that had not

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1 been resolved. We were actively representing her in that  
2 case.

3 **Q.** Were you also representing her on Walker?

04:14:57

4 **A.** I would say that we weren't representing her yet in  
5 that case because she hadn't signed an engagement letter.  
6 And she had not, as I understand it, at that time, been  
7 named as a party. So we didn't believe there was any need  
8 to represent her in the Walker case.

04:15:13

9 **Q.** Well, it says, "Basically, she wants us to tell her  
10 if she should agree to cover the lawsuit like she did with  
11 the previous E & L ones."

12 Do you see that part?

13 **A.** Can you direct my attention to it?

04:15:24

14 **Q.** The first sentence -- or second sentence where it  
15 says, "Steve," and it's to you from Alia on that September  
16 9th e-mail.

17 **A.** I see it, yes.

18 **Q.** All right. So, do you remember being asked that by  
19 Alia, Ms. Wynne?

04:15:37

20 **A.** I mean, I can -- I see the statement here, that she's  
21 relaying to me that Marcia is asking essentially us  
22 together if we should -- if she should agree to cover the  
23 lawsuit like she did with the previous E & L ones. But,  
24 we didn't agree to provide that advice. We did not tell  
04:15:59 25 her that she should or shouldn't.

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1 Q. Well, the next sentence says, "She said she is not  
2 contractually obligated to do so." And then it says, "I  
3 told her that I don't see a legal obligation to become  
4 involved at this point."

04:16:12

5 So wasn't she -- wasn't Ms. Wynne already  
6 giving her advice about that?

04:16:29

7 A. I think Ms. Wynne was advising someone who was not  
8 yet a party to a lawsuit about whether she had a legal  
9 obligation to be involved in it. And I think correctly  
10 she told a nonparty, "You don't have a legal obligation to  
11 answer or otherwise be involved in the case until you are  
12 served."

13 Q. Well, she said this before she even looked at the  
14 agreement between Veritas and E & L, right?

04:16:41

15 A. Well, I don't know the timing of her looking at  
16 that -- that agreement. I know that she is relaying  
17 her -- her client's observation or opinion that she's not  
18 contractually obligated to do so.

04:17:00

19 Q. Did anyone talk to Mr. -- did you even try to reach  
20 out and talk to Mr. Tweed at this point to see if what she  
21 was saying was right?

22 A. I did not speak with Mr. Tweed. I was not actively  
23 involved in any of the client relations at this point,  
24 although I was copied on most of this correspondence.

04:17:14

25 Q. Did you tell Ms. Wynne that she should reach out and

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1 confirm that what Ms. Radel was telling her was correct?

2 **A.** Which specific parts of what she's telling her?

3 **Q.** Well, any of that in that paragraph.

4 **A.** That -- no. Until -- until we had a -- an

04:17:38

5 attorney/client relationship in the Walker case with

6 Mr. Tweed, I didn't believe that there was any need to go

7 forth and talk to him about -- about any of this.

8 I think that I was familiar with the

9 relationship between these two entities, but I did not

04:17:55

10 believe that there was any obligation at this point since

11 we hadn't been retained by either to represent them in

12 this case. And -- and service may have just occurred.

13 The -- I didn't think it was necessary to do either.

14 **Q.** Well, then she goes on and she says, "I think she

04:18:12

15 understands that it is the" -- "that Walker is the same as

16 Bellard with respect to the violations that predate

17 January 2015."

18 Did you understand what she was talking

19 about there?

04:18:28

20 **A.** Well, she may be talking about the difference being

21 that one is a collective action, Walker; and Bellard is

22 not. It is just a multiplaintiff handful of individuals.

23 But she goes on and she talks about -- she

24 is saying she feels it unfair because she told Ed to stop

04:18:44

25 paying a day rate and because he decided to rehire Walker

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1 after he was fired for falsifying documents.

2 You know, from my perspective, those  
3 aren't legal reasons to feel something is unfair. But if  
4 she feels it is unfair, that is how she feels.

04:18:58

5 **Q.** Well, did you tell Ms. Wynne she ought to verify that  
6 allegation from Ms. Radel before we did -- before you did  
7 anything here?

8 **A.** Verify what allegation? The allegation about  
9 stopping paying a day rate?

04:19:11

10 **Q.** Yes.

11 **A.** I believe she had sufficient information from  
12 Ms. Radel. There may have been a document that she was  
13 provided about the day rate issue.

04:19:26

14 Ultimately, though, as this progressed  
15 over the next two weeks, it was evident to us that there  
16 was ongoing discussions between Mr. Tweed and Ms. Radel  
17 about working out what the potential liability would be  
18 for each party. And once we became aware of that, then we  
19 focused on just memorializing that provision in the  
20 agreement.

04:19:45

21 **Q.** Well, we were going over some of those documents  
22 earlier. Where were you getting this information about  
23 who was -- who -- about what the agreement was?

04:20:01

24 **A.** We would get information from Ms. Radel about what  
25 the agreement was, and then we would send it to both

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1 parties. And if one or the other had a question about  
2 what was in there, they would, as Mr. Tweed did at least  
3 once, relay what his opinion was about what ought to be in  
4 the agreement.

04:20:16

5 Q. Well --

6 A. And then they would continue to discuss it. And then  
7 once they ultimately had a -- an understanding, then they  
8 both signed it.

04:20:27

9 Q. Well, you never talked to Mr. Tweed and confirmed  
10 that, did you?

11 A. I did not personally talk to Mr. Tweed. I know that  
12 Alia spoke with him once on the 16th of September.

04:20:40

13 Q. Well, Ms. Wynne didn't really confirm that that was  
14 Mr. Tweed's understanding by talking to him either, did  
15 you?

16 A. No. We understood it was Mr. Tweed's understanding  
17 by his e-mail and by his acceptance of the agreement and  
18 his signature.

04:20:51

19 Q. Well, there are at least two e-mails that we were  
20 talking about with Mr. -- Mr. Tweed on cross where there  
21 wasn't an agreement, obviously, at least not the one that  
22 was in the -- on the purported conflict waiver.

23 A. No. I think that is mischaracterizing it.

04:21:08

24 I think what you see there with those  
25 e-mails is a back and forth that is going on between two

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1 business people about what the deal ought to be.

2 Ultimately, we were advised by Ms. Radel that the deal had

3 been reached and the form that ultimately was, you know,

4 clarified and included in the agreement. We sent it to

04:21:25

5 both parties. I -- presumably, if Mr. Tweed believed that

6 there had not been an understanding reached with

7 Ms. Radel, as included in the agreement, then he would

8 have let us know, as he already had, but he didn't. He

9 signed it, and he sent it back, and we provided to operate

04:21:41

10 under that -- that understanding.

11 Q. Well, did you ever -- did you ever do anything to

12 confirm that Mr. Tweed understood it?

13 A. I read his signature, yes.

14 Q. All right. Did you do anything else to confirm that

04:21:52

15 Mr. Tweed understood it?

16 A. I didn't have a conversation, if that's what you

17 mean.

18 Q. Did you direct Ms. Wynne to do anything else other

19 than just read his signature to confirm --

04:22:00

20 A. No.

21 Q. -- to counsel he understood it?

22 A. I believe once she reviewed the e-mails and looked at

23 the signed agreement, then she was satisfied that he had

24 agreed to the terms, and Ms. Radel had as well since she

04:22:13

25 signed, too.

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1 Q. All right. Turn to FP12079, sir.

2 A. Oh, same exhibit?

3 Q. Yes, sir. 141.

4 A. Yes.

04:22:41

5 Q. All right. The second part of that -- or the last  
6 part of that e-mail says, "Apparently Ed Tweed is having  
7 financial problems. She feels like he is kind of going  
8 off the deep end. She wants to end their business  
9 relationship. I told her that I don't see any problem

04:22:54

10 with her doing that, but it won't have any affect on  
11 previous liability."

12 Did you know that she had given this  
13 advice to Ms. Radel?

04:23:09

14 A. The advice that there would be no problem with her  
15 ending the business relationship?

16 Q. Yes.

17 A. I mean, I received the e-mail. So, yeah, I was aware  
18 that she had -- had indicated that it wouldn't have any  
19 impact on the litigation.

04:23:19

20 Q. I think earlier you didn't really understand the -- I  
21 think you testified earlier you didn't quite understand  
22 the relationship between Veritas and E & L in terms of  
23 there just being a one-client relationship.

24 Looking at this, don't you think that that

04:23:34

25 would have had some impact and don't you think that a

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 further inquiry would have been necessary?

2 **A.** No. I don't believe that the fact that there was a  
3 business that had one client would make a difference in  
4 terms of whether they could properly waive conflicts. I  
5 just don't believe that's the case.

04:23:52

6 **Q.** Was it ever disclosed to Mr. Tweed that at least as  
7 of this date, that Ms. -- Ms. Radel intended to end their  
8 relationship?

9 **A.** I mean, she indicates that she -- that Marcia had  
10 told her that in this e-mail.

04:24:05

11 **Q.** Was that -- that's not my question.

12 **A.** Could you repeat it?

13 **Q.** Was that disclosed to Mr. Tweed?

14 **A.** I did not disclose it to Mr. Tweed, and I don't  
15 believe anyone else did either.

04:24:15

16 **Q.** At the top of the e-mail on page 12078, you say,  
17 "What a mess. Let's discuss tomorrow."

18 **A.** Yes.

19 **Q.** Was that your thought at the time?

20 **A.** Yes, that was my thought. It was a very complicated  
21 issue both from a legal and practical perspective. It  
22 involved, you know, some issues that needed to be worked  
23 through. And so it was not as simple as just saying,  
24 sure, let's represent both. We needed to have a  
25 relatively robust and lengthy conflict letter that might

04:24:39

04:24:58

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

04:25:17

1 be different than what we would normally do. And this was  
2 different than what we normally would do. It was actually  
3 longer and more detailed in part because it contained the  
4 apportionment. And, frankly, we needed to just make sure  
5 that we understood how they were going to pay us, too. We  
6 were concerned, not having dealt directly with Mr. Tweed,  
7 that we were going to be compensated for our services.

04:25:33

8 **Q.** I think Ms. Wynne testified on hers that part of the  
9 consideration going into it was to ensure that y'all were  
10 paid. You knew that Veritas wasn't necessarily as  
11 financially stable.

12 **A.** What -- you said something about her testifying?

13 **Q.** Her testifying, yeah. When Ms. Wynne testified.

14 **A.** In her deposition?

04:25:46

15 **Q.** Yes. Yes, in deposition.

16 **A.** You're asking me about what she testified at her  
17 deposition?

18 **Q.** Yeah. I think you were there.

04:25:55

19 **A.** Yeah, I was. But I'm trying to remember what it is  
20 that you are saying that she said. I'll try to remember.

21 **Q.** Well, didn't she say one of the concerns was to  
22 ensure that y'all got paid?

23 **A.** Well, yes. I mean, in any attorney-client  
24 relationship, I mean, I think the lawyer should be paid.

04:26:16

25 And we were -- not having dealt with Mr. Tweed in the

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 manner that we had been dealing with Ms. Radel, who had  
2 been paying us, we had no track record, and so we wanted  
3 to make sure that we were going to be paid.

04:26:31

4 **Q.** Well, and Ms. Radel was already telling you that she  
5 might have trouble covering everything.

6 **A.** That she might have trouble covering everything?

7 **Q.** Yes.

8 **A.** No. I don't believe she was telling us that she had  
9 trouble covering -- you mean the litigation costs?

04:26:43

10 **Q.** Well, the litigation costs and the exposure.

11 **A.** I mean, I don't believe she told us that.

12 **Q.** Well, she did tell you that they -- that she wanted  
13 to end the business relationship. Did she tell you what  
14 impact that would have on her stream of income?

04:27:00

15 **A.** She didn't say that. She is telling us that Ed Tweed  
16 is having financial problems. And so I -- and that she  
17 would have to end the business relationship. I mean, if  
18 she really believes that he is having financial problems,  
19 then maybe he doesn't pay her.

04:27:15

20 But as far as, you know, the conflict  
21 waiver, none of that really made any difference. As far  
22 as we were concerned, if they agreed to pay under the  
23 terms that we had -- we had set up for them and they had  
24 agreed to the apportionment which would have eliminated  
25 any potential conflicts with respect to indemnification or

04:27:32

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 anything else, then we were going to be just fine.

2 Q. Did you ever ask Alia to check with Ms. Radel about  
3 what impact her ending the business relationship with  
4 Mr. Tweed would have?

04:27:45

5 A. I don't remember having a conversation with her about  
6 that.

7 Q. Mr. Ropollo, could you turn to Exhibit 81?

8 A. Yet, I am there.

9 Q. All right. What is -- can you identify this --

04:29:43

10 MR. BANES: Actually, before I move off of  
11 that, Your Honor, I am going to move to admit Exhibit 141.

12 THE COURT: Any objection?

13 MR. SCHEXNAYDER: I'm sorry, Your Honor. No.

14 THE COURT: Plaintiff's 141 is admitted without  
15 objection.

04:30:04

16 MR. BANES: Thank you, Your Honor.

17 BY MR. BANES:

18 Q. Okay. Mr. Ropollo, earlier you said that you had --  
19 well, can you identify Exhibit 81 for the record, sir?

04:30:37

20 A. It's an e-mail from me to Alia Wynne, copying her  
21 assistant, Kristin Graner, on September 11th, 2015,  
22 forwarding a sample conflicts letter and addressing the  
23 need for a conflicts letter with her.

24 Q. So just -- you were sending a form on this date?

04:30:55

25 A. It wasn't really a form. It was more of a sample, I

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 guess I would call it.

2 Q. Did you give her any other advice about what to  
3 include in the conflicts letter?

4 A. As it became more complicated as time progressed and  
04:31:08 5 there was an apportionment component that was requested to  
6 be placed in it, yes, we had more conversations about it.

7 Q. All right. But at this point, you just sent her  
8 this? Did you have any discussions with her at this  
9 point, on September 11?

04:31:26 10 A. I don't recall.

11 Q. All right. Now, turn to exhibit -- well, let's see.

12 MR. BANES: Move to admit Exhibit 181, Your  
13 Honor -- or move to admit Exhibit 81.

14 THE COURT: Eight-one or --

04:32:01 15 MR. BANES: Eight-one, Your Honor.

16 MR. SCHEXNAYDER: No objection.

17 THE COURT: Plaintiff's 1 -- I'm sorry.

18 Plaintiff's 81 is admitted without objection.

19 BY MR. BANES:

04:32:53 20 Q. Okay. Mr. Ropollo, can you turn to Exhibit 83?

21 A. I am there.

22 Q. Can you identify this document for the record?

23 A. Yeah. Let me just take a moment to refresh my  
24 recollection.

04:33:26 25 Yes. This was -- this is kind of an

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 update e-mail that Alia sent to me on Friday, September  
2 11th, around 10:00 in the morning.

3 Q. And it says that, "Ed has agreed to be responsible  
4 for any post January 1 liability if Marcia covers  
5 litigation costs."

04:33:44

6 Was that the understanding y'all had at  
7 that time?

8 A. At that -- at that moment, because it changed  
9 pretty -- pretty frequently, yes. At that moment, on  
10 September 11th, that was what -- Marcia told Alia that the  
11 agreement was to be included in the letter.

04:33:55

12 Q. Now, had any -- now, and then it says, "At the end of  
13 this year, E & L and Veritas will amicably part ways."

14 Do you see that part?

04:34:09

15 A. Yes.

16 Q. Had there been any -- was there any discussion with  
17 Mr. Tweed at this point from Fisher & Phillips?

18 A. No. I believe Alia's conversation with him was about  
19 a week later.

04:34:22

20 Q. All right. Now, later on in this e-mail, it says  
21 that Ms. Radel had called the plaintiff and that his  
22 attorney wasn't happy about it and that he was going to  
23 bring in Veritas.

24 Did you -- did this change things any with  
25 respect to your -- the conflict waiver?

04:34:44

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** The fact that she called the person?

2 **Q.** No, no. The fact that their -- the plaintiff was now  
3 going to bring in Veritas.

04:34:59

4 **A.** Oh. I mean, I think that when it comes to what the  
5 conflict letter would have to spell out, if they were  
6 named as a party, then they would be a signatory to it.

7 **Q.** Well, and did you have any discussion with Ms. Wynne  
8 about whether Ms. Radel should be a signatory to it, too?

04:35:15

9 **A.** Oh, no. I mean, unless -- again, we didn't -- we  
10 hadn't seen the amendment yet. If the amended complaint  
11 had, as they had done with Mr. Tweed, included the company  
12 and the owner, then we would have had her sign off on it  
13 as well.

04:35:30

14 **Q.** Did you confirm -- well, at this point, you didn't  
15 confirm any of this with Mr. Tweed?

16 **A.** Confirm what the --

17 **Q.** Any of what is in this e-mail.

04:35:43

18 **A.** The -- the e-mail says that they were amicably  
19 parting ways, and so that suggests to me that they would  
20 have had conversations about it. When she says "Ed has  
21 agreed," it also suggests to me that they were having  
22 conversations about it.

04:35:55

23 So, no, I didn't think there was any need  
24 for me to interfere with those discussions as they were  
25 going on and that once they had reached a decision about

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 how to proceed, they would let us know, and we would  
2 memorialize it.

3 **Q.** But you didn't confirm any of this with Mr. Tweed.

4 **A.** Not until the letter itself.

04:36:08

5 **Q.** And that was just by looking at his signature?

6 **A.** It was by looking at a signature of a document in an  
7 e-mail that transmitted it along with e-mails from him and  
8 to him in connection with the same.

04:36:27

9 MR. BANES: Move to admit Exhibit 83 -- excuse  
10 me, Your Honor. Move to admit Exhibit 83.

11 MR. SCHEXNAYDER: No objection.

12 THE COURT: Plaintiff's 83 is admitted without  
13 objection.

14 BY MR. BANES:

04:37:04

15 **Q.** Turn to Exhibit 135, Mr. Ropollo.

16 Can you identify this document for the  
17 record, sir?

18 **A.** Yes. This -- at least the first page of this exhibit  
19 is an e-mail exchange between me and Alia Wynne following  
20 up on her September 11th e-mail that we just talked about.

04:37:40

21 **Q.** And at this point you were still -- it was still the  
22 position that Marcia was -- or Ms. Radel was going to  
23 cover all the litigation costs?

24 **A.** I mean, it was the same day, so, yeah. We hadn't  
25 heard anything different since several hours before when

04:38:02

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 Marcia had relayed that.

2 MR. BANES: Your Honor, I move to admit Exhibit  
3 135.

4 MR. SCHEXNAYDER: No objection.

04:38:14 5 THE COURT: Plaintiff's 135 is admitted without  
6 objection.

7 BY MR. BANES:

8 Q. Mr. Ropollo, can you turn to Exhibit 84? Actually,  
9 look at 84 and 85 together.

04:39:33 10 A. All right. I am looking at both.

11 Q. All right. Well, my first question is, is 85 the  
12 attachment to 83 -- or 84? Excuse me.

13 A. Yes. My understanding is that 85 is the draft  
14 engagement letter that Alia refers to in 84.

04:39:57 15 Q. This document makes Veritas responsible for paying  
16 all the fees?

17 A. That's right. She specifically says in the e-mail,  
18 "I added a paragraph to make clear that Veritas is  
19 responsible for paying our invoices."

04:40:08 20 Q. All right. Now, at the end of it, she says, "Could  
21 we may say that if we have to take action regarding unpaid  
22 invoices, all three are jointly and severally liable."

23 Do you see that part?

24 A. Yeah, I do see that.

04:40:26 25 Q. Did that come from Mr. Tweed or Ms. Radel?

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** I think that came from Alia. I think Alia was just  
2 trying to, as a good steward of the firm, make sure that  
3 we weren't going to get stiffed on a bill. And it is  
4 always better to think about these things in advance and  
5 plan ahead, and that's what she was doing.

04:40:40

6 **Q.** But that wasn't discussed with Mr. Tweed at all?

7 **A.** I don't think it was discussed with anybody but me,  
8 and I declined to go along with her idea. I didn't mind  
9 her raising it, but I didn't think it was necessary.

04:40:58

10 **Q.** You didn't mind her raising it?

11 **A.** No. I thought it was a good idea for her to raise  
12 with me matters of -- of, you know, business practice in  
13 the firm.

14 **Q.** Why did you decline to do it?

04:41:11

15 **A.** I just didn't think it was necessary. I thought that  
16 it was already becoming a complicated enough engagement  
17 and I thought that that would just be probably ineffective  
18 and just more complicated than it needed to be.

19 And to be clear, when she is saying "a way  
20 to also render E & L and Tweed responsible," she is  
21 referring to the bill. She is not referring to anything  
22 else.

04:41:38

23 **Q.** Referring to the legal bills?

24 **A.** Correct.

04:41:49

25 **Q.** Right. Oh, Mr. Ropollo, turn to page -- or Exhibit

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 169.

2 **A.** Yes.

3 **Q.** Can you identify that document for the record, sir?

4 **A.** It is an e-mail from Alia to Marcia Radel, copying me  
5 and her assistant, enclosing a draft conflict letter to  
6 E & L Transfer and engagement letter and then providing  
7 some commentary in the e-mail.

8 **Q.** All right. Now, was this -- was this sent to  
9 Mr. Tweed at all?

10 **A.** No. At this point we -- since we weren't  
11 representing him yet in this matter, we were just  
12 communicating through Marcia, because she had his contact  
13 information and was going to convey all of this to him.

14 **Q.** You think -- did she end up conveying any of this to  
15 him?

16 **A.** I don't know. I assume so, because the discussions  
17 about what ought to be included in the conflict letter  
18 began not too long after this.

19 **Q.** Well, let's -- do you assume that or do you know  
20 that?

21 **A.** I am not even sure what I just said. I assume -- do  
22 I assume that she referred it to Mr. Tweed?

23 **Q.** Yes.

24 **A.** Yeah. I do assume that because I don't know  
25 firsthand whether she did or not.

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 Q. Okay.

2 MR. BANES: Move to admit Exhibit 171, Your  
3 Honor -- or, no, not 171. 169.

4 MR. SCHEXNAYDER: No objection.

04:45:45

5 THE COURT: Plaintiff's 169 is admitted without  
6 objection.

7 MR. BANES: Also move to admit 84 and 85.

8 MR. SCHEXNAYDER: No objection.

04:46:16

9 THE COURT: Plaintiff's 84 and 85 are admitted  
10 without objection.

11 BY MR. BANES:

12 Q. Turn to Exhibit 171, Mr. Ropollo.

13 A. Okay. I am there.

14 Q. Turn back to Bates stamp 031288, sir.

04:47:13

15 A. 288? All right. I am there.

16 Q. At the bottom is the e-mail we were just looking at,  
17 right, transmitting the engagement -- the draft engagement  
18 letter and conflict letter?

19 A. Correct.

04:47:31

20 Q. All right. Now, does Ms. Radel respond to this?

21 A. She does the next day.

22 Q. All right. And what does she tell Ms. Wynne?

04:47:54

23 A. This is, I believe, the first specific reference to  
24 apportionment. She says that Veritas does not want to be  
25 held responsible for all the legal costs, and I was asking

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 that this engagement letter specify the dates to which Ed  
2 and E & L agreed to take responsibility. And then she  
3 includes January 1, 2015, in a parenthetical.

04:48:18

4 **Q.** All right. Now, at this point did you reach out to  
5 Mr. Tweed and ask if this was agreeable to him?

6 **A.** No. She said she was -- she asked us to make the  
7 changes, and she said that she would forward it to Ed.

8 **Q.** Is that what y'all did?

04:48:35

9 **A.** Yes. We at some point made changes. I can't tell  
10 you exactly when, but we did.

11 **Q.** Well, take a look at the next -- the prior page,  
12 FP031287 in the same exhibit --

13 **A.** Yes.

04:48:50

14 **Q.** -- where Ms. Wynne says, "Marcia, so you would like  
15 legal fees split 50/50 with Ed and E & L, with Veritas  
16 responsible for pre-January back wages and Ed and E & L  
17 responsible for post-January 1 back wages."

18 **A.** Right.

04:49:27

19 **Q.** And is that -- did you express any concern at all at  
20 this point to any -- to Ms. Wynne that "We are negotiating  
21 an agreement between two parties to this lawsuit to settle  
22 like an aggregate liability"?

23 **A.** No. I -- we weren't negotiating anything. We were  
24 simply receiving the results of an ongoing negotiation.

04:49:49

25 And it didn't end here. I mean, there were several other

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 back-and-forth e-mails in which Mr. Tweed was a party  
2 until ultimately they reached a deal that they both --  
3 both agreed to and signed.

4 So, I did not feel like we were  
04:50:03 5 negotiating anything here.

6 **Q.** Well, were you -- it looks like y'all were advising  
7 Ms. Radel on these.

8 **A.** I think what she's doing is she is repeating back to  
9 Ms. Radel what she just told her in order to make sure she  
04:50:15 10 understood clearly. She says, "Marcia, so you would like  
11 legal fees split 50/50 with Ed and E & L, with Veritas?"  
12 She is asking a question here. So I think that what she  
13 is seeking to do is understand what the instructions are  
14 so she can place them in the agreement in a way that makes  
04:50:33 15 sense.

16 **Q.** Well, take a look at FP031286.

17 Now, it looks like an e-mail from  
18 Ms. Wynne to you, where it says, "Could we require E & L.  
19 Ed, to pay a 20K retainer and Marcia 5K, and make Ed --  
04:50:58 20 E & L/Ed's Evergreen? If we only asked for 5K from each,  
21 we are getting less than our original arrangement."

22 Now, did that come from Ms. Radel?

23 **A.** No, that came from Alia. Again, Alia is -- look, I  
24 impress upon all my lawyers to make sure that we are very  
04:51:15 25 upfront about what the expectations are regarding payment.

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

04:51:33

1 And so she is, I think, rightly concerned that with a new  
2 client, which I kind of pound into people, when we're  
3 dealing with a new client that we have not dealt with  
4 before, someone who hasn't paid us yet, we want to make  
5 sure that we have an arrangement that won't leave us in  
6 the lurch. Thus, the need for a retainer for Mr. Tweed  
7 higher than what Ms. Radel would be required to pay, and  
8 also with the idea they would be Evergreen. Meaning, he  
9 would have to replenish it after it was exhausted.

04:51:50

10 **Q.** E & L wasn't a new client, were they?

11 **A.** Well, they were a new client in the sense that we  
12 were for the first time going to rely upon their  
13 assurances that they would pay.

04:52:27

14 **Q.** It looks like there are several back and forth  
15 regarding what the content of this engagement letter is  
16 going to be, or conflict waiver. Is Mr. -- was Mr. -- was  
17 any of this discussion with Ms. Radel communicated to  
18 Mr. Tweed by Ms. Wynne or you or anyone else at Fisher &  
19 Phillips?

04:52:45

20 **A.** You know, Alia spoke with him that same day. This  
21 e-mail -- entire e-mail chain is September 16th, and it's  
22 the day that she spoke with Mr. Tweed. So it's possible  
23 that in that conversation she discussed some of this back  
24 and forth.

04:53:00

25 **Q.** It's possible -- do you --

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** I don't know.

2 **Q.** -- know if she did that?

3 **A.** I don't know. You're asking me whether someone else  
4 had a conversation, and I just don't know. I do know,  
04:53:09 5 though, that there was a conversation that she had with  
6 him that very same day.

7 **Q.** Well, you heard what Mr. Tweed said about that  
8 conversation. Do you have any basis to disagree with his  
9 version of what happened during that conversation?

04:53:39 10 **A.** Yes, based upon what I understand Alia has said about  
11 that conversation. It -- what he described bore no  
12 resemblance to what Ms. Wynne told me about.

13 **Q.** But you don't know.

14 **A.** I just know what she told me. That's what I am  
04:53:56 15 telling you.

16 **Q.** All right.

17 MR. BANES: Your Honor, move to admit  
18 exhibit -- sorry. Move to admit Exhibit 171.

19 MR. SCHEXNAYDER: No objection.

04:54:41 20 THE COURT: Plaintiff's 171 is admitted without  
21 objection.

22 BY MR. BANES:

23 **Q.** Turn to Exhibit 165, sir.

24 **A.** All right.

04:56:14 25 **Q.** Can you identify this document for the record?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 **A.** So, this is an e-mail chain -- well, actually, I  
2 apologize. It is not a chain. It is an e-mail with an  
3 attachment that Ms. Radel sends to Alia Wynne on September  
4 14th.

04:56:44

5 **Q.** Okay. So what is Ms. Wynne doing in this -- in this  
6 e-mail to Ms. Radel?

04:57:05

7 **A.** Well, her e-mail of the same day is, first of all,  
8 for an amended complaint which was filed in the Walker  
9 lawsuit last week. That was the amended complaint that  
10 named Veritas as a defendant.

04:57:26

11 And the -- she describes generally what  
12 she observes about the amended complaint, about whether  
13 sufficient facts have been pled and so forth with respect  
14 to the joint employer issue, and then just generally kind  
15 of gives the kind of rundown on a complaint that we might  
16 give any potential client that we would be seeking to  
17 represent by demonstrating what we observed about the  
18 case, and the forum, and so forth.

04:57:44

19 She then goes on to kind of describe what  
20 other options might exist, including a 12(b) motion to  
21 dismiss and so forth.

04:58:01

22 And then finally at the end, she is  
23 specifically referencing the potential for conflict and  
24 the need to see the contract with E & L -- the contract  
25 between Veritas and E & L in order to continue to assess

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 that.

2 **Q.** Now, was Ms. Wynne actually advising Ms. Radel about  
3 how they might be able to dismiss Veritas from the lawsuit  
4 at this point?

04:58:23

5 **A.** I mean, I think at this point what she's saying here  
6 is that these are the various options that a client that  
7 retained us could consider. And so she was essentially  
8 spelling out those -- those options.

9 She -- this was preservice for Veritas.

04:58:43

10 They hadn't been served, and we hadn't had an engagement  
11 agreement signed with Veritas. So she is essentially kind  
12 of spitballing here about what the potential options might  
13 be for Veritas or any company in its position to go  
14 forward.

04:58:56

15 **Q.** Well, it is fair to say that all the advice that  
16 Ms. Wynne had given Ms. Radel up to this point had been  
17 without the benefit of the contract between E & L and  
18 Veritas; is that accurate?

19 **A.** Well, she hasn't received it yet, and she is  
20 receiving it here. She requested and received it. So I  
21 am not sure I would characterize what she was providing is  
22 legal advice about a contract up to this point.

04:59:10

23 **Q.** Well, she is providing legal advice here, isn't she?

24 **A.** Not about the contract. She is asking for the  
25 contract to provide a more detailed analysis of what she

04:59:28

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 is kind of preliminarily mentioning in this e-mail.

2 **Q.** She is providing legal advice about perhaps  
3 dismissing Veritas from the suit.

4 **A.** There always is the potential in a joint employer  
04:59:41 5 circumstance to determine whether there are sufficient  
6 facts pled to permit a finding of employer status. And  
7 so, yes, she's identifying that as a potential option for  
8 Veritas, but she also is recognizing that representing  
9 both E & L and Veritas might present a conflict. And so  
05:00:01 10 she is asking for the contract in order to further assess  
11 the conflict part of that.

12 **Q.** Well, and --

13 THE COURT: Counsel, find a good stopping  
14 point.

05:00:15 15 MR. BANES: Okay, Your Honor.

16 BY MR. BANES:

17 **Q.** So this is Ms. Radel forwarding the agreement to  
18 Ms. -- Ms. Wynne at the top?

19 **A.** That's what that is.

05:00:36 20 **Q.** All right. Now -- okay.

21 MR. BANES: Mr. -- or, Your Honor, move to admit  
22 Exhibit 165.

23 MR. SCHEXNAYDER: No objection.

24 THE COURT: Plaintiff's 165 is admitted without  
05:00:49 25 objection.

STEPHEN J. ROPOLLO - DIRECT BY MR. BANES

1 MR. BANES: That might be a good place for us  
2 to stop, Your Honor, because there is quite a long kind of  
3 period of questioning after that.

4 THE COURT: Very well.

05:00:57

5 Sir, you may step down.

6 THE WITNESS: Thank you, Judge.

7 THE COURT: How much longer do you anticipate  
8 with this witness?

05:01:07

9 MR. BANES: Probably just tomorrow morning, I  
10 think.

11 THE COURT: And then where are you going to be  
12 on your evidence? You have another witness after that?

13 MR. BANES: No. I don't think I do.

05:01:16

14 THE COURT: So you anticipate closing by the  
15 morning break?

16 MR. BANES: That's potentially right, Your  
17 Honor.

05:01:30

18 THE COURT: Okay. So you will turn the witness  
19 over for direct, cross, whatever the case may be, and when  
20 all is said and done, you anticipate closing by the morning  
21 break, 10:30?

05:01:42

22 MR. BANES: There are a few factors in here  
23 that depend on -- there is a lot of deposition testimony to  
24 go through and things of that nature that I haven't done  
25 yet. So that might take a little bit longer, but --

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1 THE COURT: But in any event you will close  
2 by --

3 MR. BANES: -- I think I'll finish tomorrow.

4 THE COURT: All right. By lunch.

05:01:52 5 MR. BANES: That's my plan. That's my plan,  
6 Your Honor.

7 THE COURT: By way of defense evidence, what do  
8 you anticipate, sir?

9 MR. SCHEXNAYDER: The only additional witness  
05:02:05 10 in addition to Mr. Ropollo would be Alia Wynne.

11 THE COURT: Okay. So we will definitely finish  
12 tomorrow, and the question is it will just be approximately  
13 what time. All right.

14 MR. BANES: The only thing we had was  
05:02:22 15 preserving the right for rebuttal, but that's after the --

16 THE COURT: You don't have to reserve it. That  
17 is already there, sir.

18 MR. BANES: All right. Good.

19 THE COURT: All right. Anything else before we  
05:02:31 20 break for the evening?

21 MR. SCHEXNAYDER: What's the Court's preference  
22 on leaving boxes and documents here? Do we have to  
23 clear the room?

24 THE COURT: You are fine because we will be  
05:02:38 25 back first thing in the morning. So I don't -- we don't

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1 have mock trial tonight, do we? I think that was just that  
2 week.

3 THE LAW CLERK: Right. It was just Friday and  
4 Saturday, I believe.

05:02:45

5 THE COURT: So you can leave your stuff here.  
6 That is fine. Just make sure that housekeeping can get  
7 around you.

8 9:00 tomorrow, gentlemen.

9 THE LAW CLERK: All rise.

05:02:57

10 (Proceedings recessed at 5:02 p.m.)

11 COURT REPORTER'S CERTIFICATE

12

13 I, Kathleen K. Miller, certify that the foregoing is a  
14 correct transcript from the record of proceedings in the  
15 above-entitled matter.

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17 DATE: Feb. 19, 2019 /s/ Kathleen K. Miller, RPR, RMR, CRR  
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